



Amendment No. 1
to
Contract No. NN130000001
for
Bike Share Program Managing Partner
between
Bike Share of Austin
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced Contract. Effective May 19, 2018, the term for the extension option will be May 20, 2018 to May 19, 2023. There are no remaining extension options. The total Agreement amount is recapped below:

Term	Additional Contract Funding Amount for the Term	Total Contract Amount
Initial Term: 05/20/2013 – 05/19/2018	\$0	\$0
Amendment No. 1: Option 1 05/20/2018 - 05/19/2023	\$0	\$0

- 2.0 The City hereby amends the above referenced Contract to make the following changes:

- 2.1 Para. 1.4 is hereby deleted in its entirety and replaced with the following:

Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Elliott McFadden, Executive Director, Austin B-cycle, Phone: (512) 954-1665, Email Address: elliott@bikeshareofaustin.com. The City's Contract Manager for the engagement shall be Laura Dierenfield or designee, Phone: (512) 974-7189 Email Address: laura.dierenfield@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

- 2.2 Para. 1.5 is hereby deleted in its entirety and replaced with the following:

Advisory Board. The PPV will continue the Advisory Board consisting to include representatives as specified in Item 1.5.2 below. The Advisory Board will act in solely an advisory capacity. The members of the Advisory Board shall not have a conflict of interest and shall serve on the Advisory Board without compensation. The private partner will be the managing partner responsible for day-to-day operation of the service.

1.5.1 Through the Advisory Board, the City will advise on key decisions, including but not limited to the following:

- 1.5.1.1 Selection of vendors and suppliers
- 1.5.1.2 Selection of key personnel for the PPV
- 1.5.1.3 Approval of annual operating budgets
- 1.5.1.4 Locations and design of bicycle kiosks
- 1.5.1.5 Advertising locations, messages, logo and design
- 1.5.1.6 Membership fees

1.5.2 Advisory Board Members

1.5.2.1 Downtown Austin Alliance representatives

1.5.2.3 City of Austin Public Works representative

1.5.2.4 Austin Transportation Department representative

1.5.2.5 Downtown Austin Neighborhood Association

1.5.2.6 City of Austin Planning and Zoning Department representative

1.5.2.7 CapMetro staff member

2.3 Para. 4.5 is hereby deleted in its entirety and replaced with the following:

Termination Without Cause. Either party shall have the right to unilaterally terminate the Contract, in whole or in part, without cause any time upon 180 calendar days prior written notice, or a different period by mutual agreement. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

2.4 Para. 5.1.2.4 is hereby deleted in its entirety and replaced with the following:

Worker's Compensation and Employers' Liability Insurance: Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

(1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

(a) Waiver of Subrogation, Form WC420304, or equivalent coverage

(b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

2.5 Para. 7.9 is hereby deleted in its entirety and replaced with the following:

Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin Purchasing Office
ATTN: Contract Administrator
PO BOX 1088
Austin, TX 78767

To the Contractor:
Bike Share of Austin
ATTN: Elliott McFadden
1000 Brazos Street, Suite 100
Austin, TX 78701

2.6 The following Exhibits are hereby added:

Exhibit A-1 Austin B-cycle Org Chart
Exhibit A-2 Area of Service Map

3.0 The City hereby amends Exhibit A – Scope of Work to make the following changes:

3.1 Para. 1.0 **PURPOSE AND INTENT** is hereby deleted in its entirety and replaced with the following:

In 2013, the City sought a single entity to provide a membership-based bicycle-sharing service as part of a larger effort by the City to create a more sustainable transportation network by providing travel options, reducing vehicle miles traveled, improving air quality, mitigating congestion, and addressing the "first/last mile" with regard to public transit

The City's stated intent was to establish a commercially viable, financially sustainable bicycle-sharing service. After the initial use of federal grant funds, the bicycle-sharing service is expected to generate sufficient income from advertising, membership, and other sources to provide for its annual operating services and the cost of capital repair and replacement of the program assets.

Bike Share of Austin and the City of Austin have achieved these goals by launching the bike share system with 11 stations and 110 bikes on December 21, 2013, and growing the system to 63 stations and 510 bikes at the time of this renewal of the Contract. Since service launch, the bike share system has recorded 768,377 rider trips covering 2.3 million miles, offsetting 2.1 million pounds of carbon, burning 92 million calories, and helping Austinites avoid 174,422 car trips. The City of Austin raised \$3.4 million in public funding for capital investment while Bike Share of Austin raised \$1.2 million in private funds and grants for capital investment and operational support of the system. Ridership has consistently covered over 80% of operational costs, one of the best fair box recovery rates in the country, and has recently seen dramatic growth with expansion to the UT campus area.

The City and the Contractor desire to continue this Public-Private Venture to build on the initial success of the partnership, and to maintain and support the existing bike share system as well as pursue opportunities to grow the system to serve more of Austin. Though the initial goal of the PPV was to generate sufficient income from advertising, membership and other sources to provide for all of the costs of operation and the cost of capital repair and replacement, the City and Contractor acknowledge that a successful bike share system will require financial support beyond the funds generated from ridership fees and advertising, particularly with regard to the costs of capital repair and replacement costs. While this Contract is in effect, the City and Contractor agree to use their best efforts to accomplish these goals.

3.2 Para. 2.0 **BACKGROUND** is hereby deleted in its entirety.

3.3 Para. 3.0 **BICYCLE-SHARING SERVICE PROGRAM DEFINITION** is hereby deleted in its entirety and replaced with the following:

The City defines station-based bicycle-sharing as a membership-based program with a fleet of on-demand self-service bicycles located at bicycle-sharing stations throughout the service area, which can be rented by the minute/hour, by membership card or credit card, and returned to any bicycle-sharing station. The bicycles are distinctive and easy to ride with location and identification technologies (e.g., GPS or RFID) that provide usage data and tracking.

3.4 Para. 4.0 **BICYCLE-SHARING DESIRED OUTCOME** is hereby deleted in its entirety and replaced with the following:

The City desires a vendor-supplied bicycle-sharing system with qualities and attributes that will ensure the service is valued and used by the people of Austin. These attributes include:

- 3.1 Increase the awareness and use of Austin's expanding bicycle infrastructure and bicycle commuting in general.
- 3.2 Continue to grow the system toward the goal having 100 stations and 1,000 bikes.
- 3.3 Provides effective transportation for the "first/last mile" from other forms of transit to people's destination.
- 3.4 Provides efficient and easy circulation within the service area.
- 3.5 Integration with rail, bus, and other transit modes and facilities.
- 3.6 Increase and promote healthy active transportation initiatives.
- 3.7 Increase the visibility of bicycling and perception of bicycling as a form of transportation. for the "first/last mile" from other forms of transit to people's destination.
- 3.8 Provides a station network that creates defined, dependable service and controls distribution of bikes to meet demand and ensure bikes are parked in appropriate locations.

3.5 Para. 5.0 **ORGANIZATIONAL STRUCTURE** is hereby deleted in its entirety and replaced with the following:

Contractors' organizational structure and reporting relationship with the City is set forth in the organizational chart attached hereto as Exhibit A-1. Bike Share of Austin is led by the Executive

Director and is governed by the Bike Share of Austin Board of Directors. The Advisory Board advises Bike Share of Austin on key decisions as described in section 1.5 of the Contract. Assets remain property of the City and the City retains control over assets. Day-to-day operations are the responsibility of the Contractor, with coordination with Austin Transportation as required.

- 3.6 Para. 6.0 **FINANCIAL REQUIREMENTS, MANAGEMENT AND RECORDS** is hereby deleted in its entirety and replaced with the following:

The Contractor shall be responsible for maintaining all business records for the PPV entity and filing all required tax and legal documents. The City retains the right to inspect and audit the business records of the enterprise at its sole discretion. The Contractor shall maintain a Revenue Account, an Operating Account, a Capital Repair and Replacement Account, and an Investment Account. The Contractor shall prepare an annual budget for submittal to the Advisory Board and the City not less than 60 days prior to the end of the fiscal year (the fiscal year will coincide with the City's fiscal year). The annual budget will consist of an operating budget, a capital repair and replacement budget, and a reinvestment budget. Within 90 days of the end of the fiscal year, the Contractor will submit an annual report and financial statement to the Advisory Board and the City.

- 3.7 Para. 7.0 **SCOPE OF WORK** is hereby deleted in its entirety and replaced with the following:

SCOPE OF WORK

7.1 The Contractor, as represented by Bike Share of Austin, shall manage a minimum of bicycles and stations that are functional and appropriate for deployment in Austin.

7.2 **Operations:** The Contractor shall have an Operations Plan which addresses the following minimum requirements:

7.2.1 **Service Area Plan:** The existing service area, as well as planned expansion stations, are set forth in the map attached hereto as Exhibit A-2. Any future plans to serve areas outside the Central City, especially satellite stations serving a last mile connection from a high capacity transit stop or a neighborhood business district with sufficient trip demand to support a bike share station, will be submitted to the Board for review and recommendation to the City for written approval.

7.2.2 Final station locations, and subsequent additions of station locations, are subject to the approval of the City Traffic Engineer and must meet Americans with Disabilities Act (ADA) requirements as well as City of Austin requirements (which can be found on the City's website). The City will be responsible for obtaining any necessary permits for installation of stations in partnership with the Contractor, at the City's sole cost and expense.

7.2.3 **System Development & Deployment Plan:** Bike Share of Austin shall maintain plans for procuring for future phases and deploying the bicycle-sharing system within the defined service area, including but not limited to the following: plans for installation of the equipment; outreach and coordination with private land owners for kiosk placement; plans for input, outreach, and coordination with area stakeholders and public prior to deployment; security measures to prevent, deter, and minimize damage to or theft of bicycles, kiosks, and other related equipment; review and analysis of service area and recommendation on number of kiosks and bicycles required for a viable system based on "best practice" and public input; ordering and securing bike-share equipment from vendors, including the storage and assembling of the bicycles; coordinating with stakeholders to establish bike-share installment timeline; collaboration with contractor to establish schedule and construction of site location;

7.2.4 **Marketing and Revenue Plan:** Bike Share of Austin shall maintain a Marketing and Revenue Plan addressing the approach to market individual and corporate memberships; provide pricing for membership options and rental rates; collect revenues via cash, credit/debit cards; selling advertising opportunities, and securing other revenue opportunities.

7.2.5 **System Operations & Maintenance Plan:** the Contractor will maintain a plan to keep equipment, including bicycles and kiosks, well-maintained and clean, addressing the following requirements: redistribution of bicycles; bicycle maintenance and cleaning; maintenance records for each bicycle.

7.3 **Reporting.** The Contractor shall provide the City with monthly reports on the key performance indicators of the system, as well as a report every 6 months Contractor shall addressing at least the following:

- 7.3.1 Total number of trips and when they occurred
 - 7.3.1.1 The most popular time when the bicycles are in use
- 7.3.2 Total number of trips per station
 - 7.3.2.1 Daily
 - 7.3.2.2 Weekly
 - 7.3.2.3 Noting the most and least popular station
- 7.3.3 Duration of trips and miles traveled (either from point to point or with bicycle mounted measuring equipment)
 - 7.3.3.1 Average duration per trip
 - 7.3.3.2 Average number of miles per trip
- 7.3.4 Number of customers and their membership types
 - 7.3.4.1 24 hour memberships
 - 7.3.4.2 Weekly Memberships
 - 7.3.4.3 Yearlong Membership
 - 7.3.4.4 Student / senior citizen/ early registration
- 7.3.5 Service membership numbers and rate of growth from launch date
- 7.3.6 Spatial distribution of membership (with credit card information their location by zip code can be determined to know where most of the members live)
- 7.3.7 The carbon offset
- 7.3.8 Gallons of gas saved
- 7.3.9 Total number of calories burned
- 7.3.10 Log of customer complaints or maintenance issues with the bike-share system
- 7.3.11 Remote Kiosk Coordination Plan: The Contractor shall provide a logistic plan for remote off site bike-sharing kiosk during events.
 - 7.3.11.1 Separate report of trips, check-in and check-out to remote station
 - 7.3.11.2 Plan on how bikes will be rotated back to stations periodically during the day

3.8 Para. 8.0 **CONTRACTOR'S RESPONSIBILITIES** is hereby deleted in its entirety and replaced with the following:

Contractor shall:

- 8.1 Maintain a non- profit 501(c)(3) status.
- 8.2 Maintain proof of commercial insurance.
- 8.3 Comply with the City's MBE/WBE Program. Contractor agrees and acknowledges purchases of goods and services shall comply with the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program as described in AUSTIN, TEX., CODE chapters 2-9a (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Construction), 2-9b (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Professional Services), 2-9c (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Nonprofessional Services) and 2-9d (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Commodities) as amended, recodified or reenacted from time to time. The City will assist Contractor comply with this subsection by providing information and make staff available to consult with on the City's requirements and applicability to the proposed scope of work to be procured by Contractor.
- 8.4 **Permitted Use:** Contractor shall use the bike share assets during the term of this Agreement for the purpose of operating and maintaining the bike share program for use by the public, and related and incidental purposes and programs. The assets of the Bike Share Program shall only be used for the purpose and intent of the program as authorized by the City in accordance with the Contract.

- 8.5 shall provide access and equal opportunity to services and programs administered by Contractor that are comparable to other bike share programs, that meet the needs of the community, and for which the Contractor may charge fees that are reasonable, consistent with bike share programs in the region.
- 8.6 **Maximize Public Use:** Contractor shall exercise diligence in using, managing and operating the bike share program assets in a manner that maximizes public access to the assets and is responsive to community feedback. Contractor shall exercise due diligence and good faith efforts in managing and operating the bike share program so as to minimize operating expenses and maximize operating revenues consistent with the uses for the bike share program assets. Contractor in establishing and implementing its operating policies, may schedule not only those events that generate substantial direct revenue to the bike share program but also those events that produce less direct revenue but in Contractor's good faith judgment, generate either a significant cultural, or other benefit public or otherwise serve the public interest; provided that Contractor shall ensure the bike share assets are used for a public purpose that furthers the bike share program's mission and is in compliance with the Contract.
- 8.7 **Illegal Use Not Permitted:** Contractor may not use bike share program assets for any use or purpose that violates any applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Travis, or the City of Austin, or other lawful authority with jurisdiction over the assets, and shall not permit to be carried on any activity that would constitute an actionable nuisance under the laws of the State of Texas. Contractor shall take all reasonable precautions to eliminate nuisances or hazards relating to its activities.
- 8.8 **Fees:** Bike Share of Austin shall seek advice from the Advisory Board regarding setting of membership fees. Fees shall be posted so as to be visible to the public and at each point of sale for each membership. Contractor agrees to offer a fifty percent discount off annual membership prices to City employees. With each annual report to the Advisory Board and the City, Contractor shall include the number of City employees with discounted memberships.
- 8.9 **Inspections:**
- 8.9.1 Contractor shall receive Bike Share Program bikes, kiosks, and software inventory in coordination with City Contract Manager, and attach City-provided asset tags to each asset.
- 8.9.2 An inspection of the bike share program assets shall be conducted annually; provided, however, the City retains the right to access bike share program assets for periodic and regular inspections during normal business hours, and after hours, with prior notice as may be necessary during the term of this Contract. The City may inspect to insure that fire, safety and sanitation regulations and other provisions contained in this Contract or in the City Code are being adhered to by the Contractor. Inspection by the City does not relieve Contractor under any of any of its obligations by Contractor to maintain the assets. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Contract.
- 8.10 **Incident Reports:** Contractor shall notify the City in writing, by the next business day following the occurrence/notice, of any complaints or reports of violations of the law that have occurred with bike share assets, or that have a material effect on the Contractor's operations. Contractor shall maintain for review by the City upon reasonable notice, an incident log of all incidents or violations that occur regardless of whether it is reported to the City.
- 8.11 **Public Relations:** Contractor shall summarize and notify the City of all media inquiries concerning the bike share program or its operation within twenty-four (24) hours of the interview or other media inquiry in question. Contractor will provide the Contract Manager with draft copies of any public relations material or campaigns and obtain prior written approval before the release of any such material or campaign.
- 8.12 **Independent Audit:** Contractor shall arrange for an audit of its books and records by an independent, certified public accountant. This audit shall be conducted at Contractor's sole cost and expense and shall cover the previous five year period. Contractor shall deliver to the Advisory Board and the City an original, signed copy of each such audit within 180 days after the fifth year anniversary of the Effective Date of this Agreement. Notwithstanding the foregoing the City may request an audit or review of Contractor's fiscal stability prior to the performance review if deemed necessary due to facts or information received by the City. If Contractor completes its own independent audit or review, other than in anticipation of the

performance review, Contractor shall provide the City the audit within thirty (30) days of completion of the audit.

- 8.13 **Solicitation of Private and Public Funding**: Contractor shall, in its sole discretion, (a) use its best efforts to (i) actively solicit private support for the Bike Share Program through membership fees and charitable contributions and (ii) actively solicit federal, state or local grants or other funds to support the operation and purposes of the Bike Share Program; and (b) apply all funds contributed to it as membership fees, charitable donations, public grants or loans, or any other sources, to the Revenue account in accordance with this Contract.

- 8.14 **Inventory Control and Asset Disposal**: Contractor shall maintain an inventory control and asset disposal plan, and the City may review same with reasonable notice

3.9 Para. 9.0 **CITY'S RESPONSIBILITIES** is hereby added:

The City recognizes its investment in the Bike Share Program, including but not limited to the City's purchase of physical assets and dedication of other municipal resources. While this contract is in effect, the City will take any and all actions that the City, in its sole discretion and at its sole option, deems to further the City's interests in the Bike Share Program, provided that the Bike Share Program continues to further a municipal purpose of the City.:

This may include, in the City's sole discretion, the following:

- 9.1 Use its best efforts to accommodate new stations in City Right-of-Way.
- 9.2 Use its best efforts to actively solicit federal, state or local grants or other funds, as well as any applicable bond funds, to support the operation and purposes of the Bike Share Program and make those funds available to Contractor for operation, capital repair, and replacement expenses.
- 9.3 Use its best efforts to support B-cycle's need for B-cycle stations to remain open during major City events, including SXSW, Austin City Limits Music Festival, the Austin Marathon, and similar public events.
- 9.4 Use its best efforts to protect B-cycle stations from closure during any construction projects or other events requiring closure of public right-of-way, and ensure when one or more of B-cycle's stations must be closed to accommodate construction, the City will require the owner, developer, or general contractor to compensate B-cycle according to existing ordinance and laws protecting businesses from losing income during closures.

3.10 Schedule of deliverables is hereby deleted in its entirety and replaced with the following:

Timeline	Activity	Deliverable/Performance	Reference
NLT 60 days prior to the end of the fiscal year	Contractor shall submit an annual budget	To Advisory Board and City for review	SOW, Section 6.0
NLT 90 days after the end of the fiscal year	submit an annual report and financial statement	To Advisory Board and City for review	SOW, Section 6.0
By 10 th day of each month, Monthly report to Board and City	Key performance indicators	To Advisory Board and City for review	SOW, Section 7.3
Semiannually, within period	Submit consolidated reporting of previous six months key	To Advisory Board and City for review	SOW, Section 7.3
Next business day of incident	Notice of complaints or reports of violations of law	Notice to City	SOW, Section 8.10
24 hours after interview or media inquiry	Notify City of media inquiries and submit to City draft copies of PR	Prior written approval by the City	SOW, Section 8.11

Within 180 days after the 5 th anniversary of the execution of the Contract	Independent Audit	To Advisory Board and City for review	SOW, Section 8.12
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4.0 MBE/WBE goals were not established for this contract.

5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.


6.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

Printed Name:

Bike Share of Austin
1000 Brazos Street, Suite 100
Austin, TX 78701

 5/11/18

Signature & Date:

John Hilbun, Contract Mgmt Specialist IV
City of Austin
Purchasing Office

 05/11/18



**Financial and Administrative Service Department
Purchasing Office**
P.O. Box 1088, Austin, Texas, 78767

May 20, 2013

Craig Staley
Bike Share of Austin
400 Nueces St
Austin, TX 78701

Dear Mr. Staley:

The City of Austin has approved the award, negotiation, and execution of a contract with your company to implement the Bike Share Program for the Public Works Department.

Responsible Department:	Public Works Department
Department Contact Person:	Nadia Barrera
Department Contact Email:	Nadia.Barrera@austintexas.gov
Department Contact Telephone:	(512) 974-7142
Project Name:	Bike Share Program
Contractor Name:	Bike Share of Austin
Contract Number:	NN130000001
Contract Period:	5/20/13 – 5/19/18
Initial Contract Period Amount	N/A
Requisition Number:	6000 12101000019
Solicitation Number:	RFP EAG0109
Agenda Item Number:	47
Council Approval Date:	1/17/13

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person above.

Sincerely,

Erin D'Vincent,
Purchasing Office

NN130000001

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
BIKE SHARE OF AUSTIN
For
Bike Share Program Development & Management**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Bike Share of Austin, LLC ("Contractor"), having offices at 400 Nueces, Austin, Texas 78701.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 Engagement of the Contractor. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work. The Contractor shall be the managing partner of this Public-Private Venture (PPV).

1.2 Responsibilities of the Contractor. The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 Responsibilities of the City. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.3.1 City will provide to the Contractor the following:

1.3.1.1 Site location information for bike stations.

1.3.1.2 Right of way information and permitting station locations.

1.3.1.3 Name and contact information for bicycle, kiosk, and software vendor upon approval by City Council.

1.3.2 City shall maintain ownership of bike share program, equipment, and inventory. The Contractor will manage the bike share program funds, and accounts.

1.3.3 Work Performed By the City. Public Works has assigned a Project Manager to oversee the Contractor's work and provide support as needed. Specific functions the City will perform include:

1.3.3.1 Overall management of the project process, scope, schedule, deliverables, and budget.

1.3.3.2 Maintain ongoing communication with Contractor team, project stakeholders and agency partners.

1.3.3.3 Provide outreach to media, as needed

1.3.3.4 Provide technical support to the Contractor team where appropriate.

1.3.4 In addition, Public Works will make the following technical resources available for the Contractor's use:

- 1.3.4.1 Traffic counts, when available
- 1.3.4.2 Geographic information systems (GIS) data
- 1.3.4.3 Preliminary station planning area analysis

1.4 Designation of Key Personnel. The Contractor's Contract Manager for this engagement shall be Craig Staley, Phone: (512) 473-0222, Email Address: craig@mellowjohnnys.com. The City's Contract Manager for the engagement shall be Annick Beaudet or designee, Phone: (512) 974-6505, Email Address: annick.beaudet@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

1.5 Advisory Board. The PPV will establish an Advisory Board (Board) consisting to include representatives as specified in Item 1.5.2 below. The members of the Board shall not have a conflict of interest and shall serve on the Board without compensation. Within 15 business days after the execution of the Contract, the Contractor will submit to the City for written approval, the initial Board membership and Board Charter. The private partner will be the managing partner responsible for day-to-day operation of the service.

- 1.5.1 The City will participate in Key Decisions, including but not limited to the following:
 - 1.5.1.1 Selection of vendors and suppliers
 - 1.5.1.2 Approval of key personnel for the PPV
 - 1.5.1.3 Approval of annual operating budgets
 - 1.5.1.4 Final approval of bicycle kiosk locations and designs
 - 1.5.1.5 Final approval of advertising locations, messages, logo and design
 - 1.5.1.6 Approval of release of funds from the Revenue, Capital Repair & Replacement, and Reinvestment Accounts
 - 1.5.1.7 Membership fees
- 1.5.2 Board Members
 - 1.5.2.1 Downtown Austin Alliance representatives
 - 1.5.2.2 Convention Visitor Bureau
 - 1.5.2.3 City of Austin Public Works representative
 - 1.5.2.4 Austin Transportation Department representative
 - 1.5.2.5 Downtown Austin Neighborhood Association
 - 1.5.2.6 City of Austin Planning and Development Department representative
 - 1.5.2.7 CapMetro staff member

SECTION 2. SCOPE OF WORK

2.1 Contractor's Obligations. The Contractor shall fully and timely provide all deliverables described in the Scope of Work, Exhibit A and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

SECTION 3. Gross Revenue

3.1 Gross Revenue includes operating revenues from memberships, advertising, and all other sources of income.

3.2 All Gross Revenue shall be deposited in a Revenue Account in accordance with Section 6.0 of Exhibit A.

Contractor shall use the Gross Revenue for the operations, maintenance and future improvements to the program's assets in accordance with Section 6.0 of Exhibit A.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall be in effect for an initial term of 60 months and may be extended thereafter for up to one additional 60 month period, subject to the approval of the Contractor and the City Purchasing Officer or his designee. Not less than 180 calendar days prior to the end of the initial contract period, both partners will indicate their intentions to extend the agreement for additional 60 months. If either party decides not to continue the operation, then all assets shall become City property and the City shall have the right to enter into a new partnership at its sole discretion.

4.1.1 Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 365 calendar days unless mutually agreed on in writing).

4.1.2 **Contract Close-Out**

4.1.2.1 Contractor shall coordinate and conduct an inventory of all Bike Share Program assets with the Contract Manager prior to contract closeout.

4.1.2.2 Upon contract close out all program assets to include spare parts, tools, funding and accounts shall be returned to the City without compensation.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 180 calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City

and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance**: The following insurance requirements apply.

5.1.1 General Requirements

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide to the City Certificates of Insurance as verification of required insurance in accordance with Section 5.1.2 below and as follows:

5.1.1.2.1 Commercial General Liability Insurance coverages submitted to the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City, and;

5.1.1.2.2 Business Automobile Liability and Worker's Compensation and Employer's Liability Insurance submitted to the City's Contract Manager and the below address prior to Bike Program Launch and within ten (10) calendar days after written request from the City's Contract Manager.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable

requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 Specific Coverage Requirements. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage, consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Property Insurance.** The Contractor shall provide All Risk Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.

5.1.2.6 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.1 **Equal Opportunity**

5.1.1 **Equal Employment Opportunity.** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.2 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the such amount will be refunded to the City by the Contractor.

5.3 **Delays**

5.3.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.3.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.4 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.4.1 **Patents.** As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

5.4.2 **Copyrights.** As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this paragraph shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

5.4.3 **No Warranty By City Against Infringements:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.

5.4.4 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright

protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.5 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and

environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 Significant Event. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

- 7.4.1 disposal of major assets;
- 7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;
- 7.4.3 any significant termination or addition of provider contracts;
- 7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;
- 7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;
- 7.4.6 reorganization, reduction and/or relocation in key personnel;
- 7.4.7 Change of 501c3 status;
- 7.4.8 any litigation against the Contractor; or
- 7.4.9 significant change in market share or product focus.
- 7.4.10 Expansion of the bike share system and docking stations
- 7.4.11 Loss or removal of bike share kiosk and/or bikes
- 7.4.12 Malfunctioning of product (closing or temporary closing of bike share kiosk for maintenance or other issues)

7.5 Right To Audit

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 Stop Work Notice. The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable

for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 Indemnity

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.8 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin, Purchasing Office
ATTN: Contract Administrator

P O Box 1088

To the Contractor:
Bike Share of Austin
ATTN: Craig Staley, Contract Manager

400 Nueces

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within ten (10) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will present the dispute to the Advisory Board to review and recommend a resolution. If, within thirty (30) calendar days after the recommendation from the Board, the parties have not succeeded in resolving the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation. If the dispute is not resolved the contract will be terminated in accordance with Item 4.5, Termination Without Cause.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no**

goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 Subcontractors

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 Living Wages and Benefits

7.23.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this Contract, unless Published Wage Rates are included in the solicitation, if applicable. In addition, the City may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.

7.23.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this Contract. Proof of the health care plan shall be provided prior to award of a contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.23.3 The City requires Contractors to provide a signed certification within five (5) calendar days of Contract execution certifying that all employees directly assigned to this Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan (see Exhibit C, Living Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the Contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.23.4 The Contractor shall maintain throughout the term of the Contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.23.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.23.4.2 time and date of week when employee's workweek begins;

7.23.4.3 hours worked each day and total hours worked each workweek;

7.23.4.4 basis on which employee's wages are paid;

7.23.4.5 regular hourly pay rate;

7.23.4.6 total daily or weekly straight-time earnings;

7.23.4.7 total overtime earnings for the workweek;

7.23.4.8 all additions to or deductions from the employee's wages;

7.23.4.9 total wages paid each pay period; and

7.23.4.10 date of payment and the pay period covered by the payment.

7.23.5 The Contractor shall provide with the first invoice and as requested by the City's Contract Manager, individual Employee Certifications for all employees directly assigned to the Contract containing (see Exhibit D, Living Wages and Benefits Employee Certification):

7.23.5.1 the employee's name and job title;

7.23.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;

7.23.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.

7.23.6 The employee certifications shall be signed by each employee directly assigned to the Contract.

7.23.7 Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.

7.23.8 The City's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph to verify compliance with this provision.

7.24 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.25 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.26 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.27 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.28 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin, see Exhibit E.

7.29 **Incorporation of Documents.** Section 0100, **Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
<http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

7.30 **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.30.1 This Contract;

7.30.2 Solicitation No. EAG0109 including subsequent addendum;

7.30.3 Contractor's Offer dated June 19, 2012 including exhibits.

7.31 **Interlocal Purchasing Agreements.**

7.31.1 The City has entered into Interlocal Purchasing Agreements with other governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible agencies that have an interlocal agreement with the City.

7.31.2 The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

BIKE SHARE OF AUSTIN

By: 
Signature

Name: CRAG STALEY
Printed Name
Title: DIRECTOR
Date: 5-15-13

CITY OF AUSTIN

By:  / 
Signature

Name: Erin Vincent / Steve Aden
Printed Name
Title: Buyer II / Corporate Purchasing Manager
Date: 5-20-13 / 5-20-13

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Non-Discrimination Certification
Exhibit C	Living Wages and Benefits Contractor Certification
Exhibit D	Living Wages and Benefits Employee Certification



Request for Proposal to the City of Austin
Solicitation No: EAG0109
Requisition No: 6000 12101000019
Commodity Code: 9522220



Executive Summary:

Downtown Austin's recent population growth and urban density has surprised many in our community. The population is anticipated to continue to grow as Austin is now the 13th biggest city in the US. Already ranked as one of the worst traffic cities, the city of Austin will have to get creative about how people move about in and around its urban core. As we know from looking at other communities in the US and other parts of the world, the bicycle is a viable and important transportation option, and is becoming more important as local governments look for ways to address transit needs and congestion. The bicycle will become vitally important to Austin, as our city does not have a decades old mass transit infrastructure that includes trains and streetcars. Considering the velocity of growth within the city of Austin, the bicycle is our community's single best option when it comes to building a transportation network that not only functions well, but is economically viable, ecologically sound, and helps to reduce congestion.

Bike share systems are already being utilized in 23 cities throughout the US, and they are a growing trend in municipalities looking for better ways to add to their transportation network. For the most part, bike share systems are self sustaining and supported privately to fund installation and growth, creating little burden on taxpayers and they operate with minimal impact to roads and public spaces. Bike share systems are designed for short trips, using a card based membership system. In some cases, bike share has been found to replace upwards of 50-60% of car trips. The systems are great for urban residents, tourists, or anyone needing to make a short trip within the city. Bike share is perfect for distances just outside of a comfortable walk, but too short to make sense to drive an automobile. An obvious benefit to its members and users, bike sharing is a huge benefit to motorists that have to drive, by helping to reduce traffic.



Part I. Business Organization

Bike Share of Austin, LLC is a state of Texas registered, Limited Liability Company and a 501 C3. The entity was created by representatives from Mellow Johnny's and GSD&M. The entity was put together to be an independently managed company that will be overseen by a board of directors.

The mission of Bike Share of Austin is to implement, operate, and grow a bike sharing system that will become part of the fabric of Austin's transit system. The organization will be a not-for-profit business, supported by revenue from memberships and usage fees, as well as private donations and sponsorships that will fund its growth. The goal of the system is to become self sustaining and able to grow each year by increasing participation and community support. The system will have various partners in the community including; the City of Austin, Capitol Metro, and agencies such as the Downtown Austin Alliance, Austin Convention & Visitor Bureau, Movability Austin, and the downtown Austin Neighborhood Association. Committed Private Partners include GSD&M, Whole Foods, Cirrus Logic, RGM Advisors, Austin Ventures, and C3 Presents.

Part II System Concept & Solution

Purpose and Intent -Bike share of Austin will operate a member based bicycle sharing service. The entity will be a non-profit actively soliciting sponsorships and community support in addition to the revenue stream from membership and usage fees by its users. The entity will be funded by \$500,000 in private funds and \$1,500,000 from CAMPO's STPMM Federal Transportation Grant.

Background - Bike Share of Austin seeks to address the transit and mobility challenges already faced by Austin. As well as being able to address the continued growth of the City and urban density.

Bicycle-Sharing Service Program Definition -Bike Share of Austin will operate a membership based program, much like other bike share programs operating in the US currently. Bikes will have a GPS tracking system and a usage program that incentivizes short trips of 30 min or less. The system will connect dense high traffic areas and neighborhoods around downtown as well as overlay current Capitol Metro transit system so they work in conjunction. An annual membership will provide system access for regular users, and usage fees don't kick in until after the first 30 minutes, incentivizing short trips. The intent of the system is that once the membership fee is paid, usage throughout the year is free.

Bicycle-Sharing Desired Outcome - Austin is already well on its way to becoming a cycling conscious city. The goal of the system will be to provide 35-40 stations and 400 + bikes in a network that connects the usefulness and convenience of the current transportation system. Bike Share of Austin will cover first/last mile connectivity to other forms of transit such as the Cap Metro and Metro Rail. Bike Share of Austin will increase the profile and visibility of cycling as a transit solution in the city. Some cities that have bike share systems have seen as much as a 50% increase in privately owned bike ridership. Study after study has also shown that

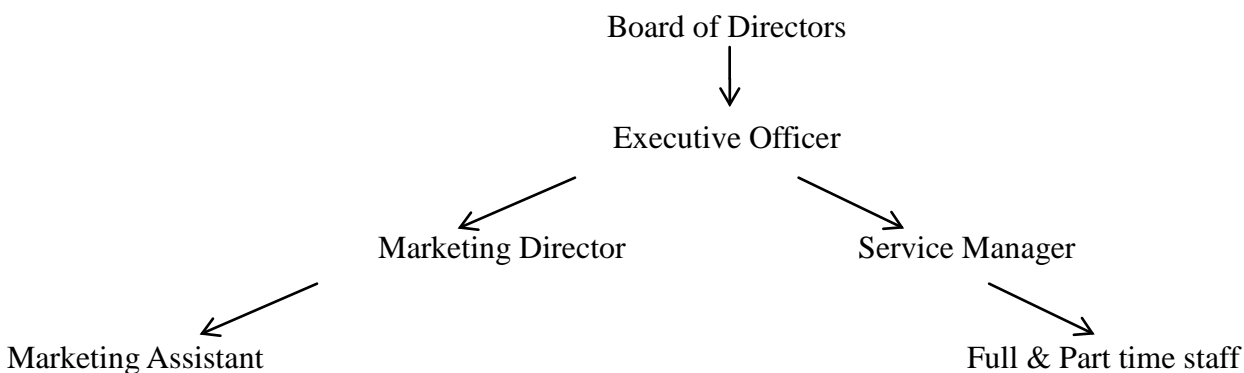


the limitations and barriers to start using a bicycle for transit go down and safety statistics go up as more bicycles are being used on the road.

The coverage area for the Bike Share system will basically be the Downtown Grid - from the River to MLK, then Lamar to East Austin. The stretch into East Austin will accomplish a couple of important goals: One is reaching lower income households that will be able to use the system as their complete solution for commuting to work or running errands. The other is making the system accessible to the “Unbanked”, those without a credit card, who in many cases will benefit the most from the inexpensive transit option that bike share will provide.

Organizational Structure – Bike Share of Austin is a 501c3 and will be responsible for day to day operations of service, management, staff and accounting. As the city's partner in the public/private venture, or PPV, the entity will be governed by a board of directors and then managed by an Executive Officer, overseeing the daily operation. Key decisions involving system growth and system replacement in addition to all capital expenditures will be made with oversight and input from the City.

Staff Structure - We expect to have a board of directors with 10-12 community leaders, including representatives from City of Austin, Cap Metro, Movability Austin, Mellow Johnny's, GSDM and other private entities. We expect that Bike Share of Austin in its first year of operation will create 5-6 full time jobs, and another 3-4 part time jobs. The majority of these being service and mechanical experienced jobs.



Financial Requirements & Management and Records – As stipulated, Bike Share of Austin will provide \$500,000 of initial project cost to secure the \$1.5 million transportation grant. The organization will be operated with the specified waterfall of accounts. Including revenue, operating, CR&R and Re-investment accounts. As customary for a partnership the managing partner will submit a business plan, start a budget for approval before beginning work, and produce annual profit/loss statements and budgets.

Scope of Work

Install System – Bike Share of Austin is committed to the goal of install by May 2013. Based on the federal funds and the city's involvement, the city will own the assets of Bike Share of Austin with the non-profit operating under the five year contract that the City will award.



Operations -The managing partner will operate within all development and review stipulations as it pertains to the various departments within the City.

Bike Share Business Plan- There will be developed an operations plan submitted to the City that will cover all aspects and details with operation, staffing, pricing and development, and budget.

Marketing & Revenue Plan - Managing partner

- marketing and ongoing solicitation of sponsorship and support will be a key item of the bike share system
- as with any new start up, brand development, naming and logos will be a part of the initial plan

System Operations and Maintenance - The key operation will be maintenance and redistribution, specifically bicycle safety checks and repairs. There will be a full time staff member engaged daily in safety checks, schedule maintenance, repairs, tunes ups and balancing the bicycles within the system repair network to meet the traffic demands.

Reporting Plan - All of the current bike share systems in operation use software and a back of house system, that provides excellent data on the program's effectiveness and usage. The Managing Partner will produce a monthly profit/loss statement as well as usage and participation reports.

Partner Capabilities - The two entities that currently represent the managing partner are Mellow Johnny's and GSD&M, two companies that are considered best in class in the industries they work in. Mellow Johnny's Bike Shop is a one-of-a-kind cycling concept in the heart of downtown Austin. The historic brick warehouse is a retail mecca that offers bikes, equipment, apparel, service and training. More importantly, it serves as a community hub for cyclists and citizens of all levels to be encouraged and motivated to view cycling as a means of transportation and fitness. Mellow Johnny's occupies 18,000 sq ft in the center of downtown Austin. Founded May 2008, Mellow Johnny's has 45 employees, and sells upwards of 2,000 bikes annually. The business brings some core competencies in the areas of sales, marketing, service and day to day operations management.

GSD&M has been in business for more than 40 years and is one of the worlds noted advertising firms. GSD& M is an advertising agency headquartered in Austin, Texas. With a restless culture and *purpose* as a guiding force, GSD&M builds brands with an integrated creative and media approach. GSD&M builds brands with an integrated creative and media approach. GSD&M is part of Omnicom Group, Inc. (NYSE: OMC) For more information go to GSMN.com

CITY OF AUSTIN, TEXAS

Purchasing Office REQUEST FOR PROPOSAL (RFP) Offer Sheet

SOLICITATION NO: EAG0109

COMMODITY/SERVICE DESCRIPTION: Development and Management of Bike Share Program

DATE ISSUED: October 22nd, 2012

REQUISITION NO.: 6000 12101000019

PRE-PROPOSAL CONFERENCE TIME AND DATE: Tuesday, October 30th, 2012, 10 AM, local time

COMMODITY CODE: 9522220

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
3rd floor conference room, AUSTIN, TEXAS 78701

FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT:

PROPOSAL DUE PRIOR TO: November 15th, 2012, 2:15 PM, local time

Erin D'Vincent

COMPLIANCE PLAN DUE PRIOR TO: N/A

Buyer II

Phone: (512) 972-4017

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 310, AUSTIN, TEXAS 78701

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.

P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 5 SIGNED COPIES OF OFFER

One electronic copy of the proposal in Word or PDF format shall also be submitted on either a CD or a flash drive with the original sealed proposal

OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.



Signature of Person Authorized to Sign Offer

Lauren Ziedonis Marketing Manager

Signer's Name and Title: (please print or type)

FEDERAL TAX ID NO. [REDACTED]

Date: 11/5/12

Company Name: Bike Share of Austin

Address: 400 Nueces

City, State, Zip Code Austin TX 78701

Phone No. (512) 473-0222

Fax No. ()

Email Address: laurenZemellowjohnnys.com

Offer Sheet

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0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM	2
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0800	NON-DISCRIMINATION CERTIFICATION	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	1
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT	2
0815	LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION	1
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0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE or NO GOALS UTILIZATION PLAN	2
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N/A	ATTACHMENT A	3

All other Sections may be viewed at: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm

RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER**

- Cover Page Offer Sheet
- Section 0600 Proposal
- Section 0700 Reference Sheet
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 MBE/WBE Procurement Program Package or No Goals Utilization Plan

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

The Vendor agrees, if this Offer is accepted within 180 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS.

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the address or phone number indicated on page 1 of this Offer Sheet. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.

All Contractors and Subcontractors should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which

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could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made bycheck unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

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<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and

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Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and

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regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

- A. Recycled deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior

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to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

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adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
- (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised 6/01/98).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

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- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit,

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or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **OWNERSHIP AND USE OF DELIVERABLES**: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

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- A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.
- C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.
39. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
40. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
41. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
42. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City

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shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
44. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
45. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
46. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
47. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
48. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
49. **DISPUTE RESOLUTION**:
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

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- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
52. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

55. EQUAL OPPORTUNITY

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

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- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to erin.d'vincent@austintexas.gov, or fax, to 512-972-4015, by 3 PM, local time, on Thursday, November 1st, 2012.

2. **ALTERNATE BIDS/QUOTES** (reference paragraph 7A in Section 0200)

Alternate Bids/Quotes will NOT be considered.

3. **INSURANCE**. Insurance is required for this solicitation.

A. **General Requirements**. See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements**. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance**. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC 420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC 420601, or equivalent coverage

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- ii. Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
- (1) The policy shall contain the following provisions:
- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage (X,C,U).
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.
- iv. Property Insurance. The Contractor shall provide All Risk Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.
- v. Directors and Officers Insurance. Directors and Officers Insurance with a minimum of not less than \$1,000,000 per claim shall be in place for protection from claims arising out of negligent acts, errors or omissions for directors and officers while acting in their capacities as such. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The coverage shall be continuous for the duration of the Contract and for not less than twenty-four (24) months following the end of the Contract. Coverage, including renewals, shall have the same retroactive date as the original policy applicable to the Contract or evidence of prior acts or an extended reporting period acceptable to the City may be provided. The Contractor shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.
- C. Endorsements. The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

4. TERM OF CONTRACT

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- A. The Contract shall be in effect for an initial term of 60 months and may be extended thereafter for up to 1 additional 60 month period, subject to the approval of the Contractor and the City Purchasing Officer or his designee. *5 years*
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 365 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

THIS IS A 60 MONTH CONTRACT.

5. QUANTITIES

The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

6. DELIVERY REQUIREMENTS

Location:

Days: TBD

TBD

- A. Unless negotiated and agreed upon between the City and the Contractor, delivery is to be made within 14 calendar days after the order is placed (either verbally or in writing). All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. The Contractor shall confirm the quantity to be shipped on all orders within two (2) hours of notification by phone from the City.
- D. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 52 in Section 0300).

7. RECYCLED PRODUCTS

- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
- B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/>.

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- C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

8. LIVING WAGES AND BENEFITS (applicable to procurements involving the use of labor)

- A. In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.
- C. The City requires Contractors submitting Offers on this Contract to provide a signed certification (**see the Living Wages and Benefits Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- D. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:
- i. employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;
 - ii. time and date of week when employee's workweek begins;
 - iii. hours worked each day and total hours worked each workweek;
 - iv. basis on which employee's wages are paid;
 - v. regular hourly pay rate;
 - vi. total daily or weekly straight-time earnings;
 - vii. total overtime earnings for the workweek;
 - viii. all additions to or deductions from the employee's wages;
 - ix. total wages paid each pay period; and
 - x. date of payment and the pay period covered by the payment.
- E. The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications (**see the Living Wages and Benefits Employee Certification included in the Solicitation**) for all employees directly assigned to the contract containing:
- i. the employee's name and job title;
 - ii. a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;
 - iii. a statement certifying that the employee is offered a health care plan with optional family coverage.

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Employee Certifications shall be signed by each employee directly assigned to the contract.

- A. Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract.
- G. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified in paragraph D above to verify compliance with this provision.

9. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit, certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

10. ECONOMIC PRICE ADJUSTMENT

- A. Prices shown in this contract shall remain firm for the first 24-month period of the contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor subject to the following considerations:
- B. Price Increases
 - i. Requests for price increases must be made in writing and submitted to the appropriate Buyer in the City's Purchasing Office. The letter must be signed by a person with the authority to bind the Contractor contractually, shall reference the contract number, and include the following documentation:
 - (1) an itemized, revised price list with the effective date of the proposed increase;
 - (2) copies of the documentation provided by the manufacturer regarding the proposed price increase if the contractor is not the manufacturer of the products. If the Contractor is the manufacturer of the products, a letter so stating must be provided;

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Contractor shall submit, as a part of the request for increase, the version of the U.S Department of Labor Consumer Price Index for U.S. City Average (the "Index") current as of the date of the Contractor's Offer; and a copy of the index for the most current period.

- (3) Proposed price increases must be solely for the purpose of accommodating increases in the Contractor's costs for the products or services provided. Prices for products or services unaffected by verifiable cost trends shall not be subject to change.
- ii. Requests for price increases must be made in writing and submitted to the appropriate Contract Manager prior to each yearly anniversary date of contract. Prices will only be considered for an increase at that time. Once received, the City will have 30 calendar days to review and approve/disapprove the requested increase. Should the City not agree with the requested increase, Contractor may either maintain the prices currently in effect, negotiate an acceptable increase with the City or terminate the contract.
- iii. The proposed percentage change between the current contract price and the requested price shall not exceed the percentage change between the Index in effect at the beginning of the current review period and the one in effect at the time the price increase is requested. Except in the case of emergency situations, the requested index related or non-index related price increase shall not exceed twenty percent (20%) for any single line item, and in no event shall the total amount of the contract be automatically increased as a result of the increase in any one or more line items made pursuant to this provision.
- iv. Since the perceived need for price increases may be due in whole or in part to factors other than index changes, the City may consider approving fully-documented increase requests which, in the Contractor's opinion, justify price increases for one or more line items in the contract. If index changes are responsible in part for the requested change, those changes shall be documented as previously described above.

C. Price Decreases

- i. Proposed price decreases may be offered to the City at any time, and become effective upon acceptance by the City unless a different effective date is specified by the Contractor. Request for price decreases by the City will be based on the same documentation as price increase request. Price decrease offers may also be subject to negotiation.
- ii. Price decreases based on relevant factors may be requested by the City at any time. Such requests shall be accompanied by a complete statement of the City's justification for the request. The Contractor shall have 30 calendar days to respond to the City's request. Following receipt of the Contractor's agreement with the requested decrease, the City may implement the decrease at any time. Should the Contractor not agree with the requested decrease, the City may either maintain the prices currently in effect, negotiate with the contractor, or terminate the contract.

11. INTERLOCAL PURCHASING AGREEMENTS (applicable to competitively procured goods/services contracts).

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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12. **BUY AMERICAN ACT – SUPPLIES** (applicable to certain Contracts with Federal funding).

- A. In accordance with applicable Federal Regulations, the City is restricted from purchasing supplies that are not domestic end products, for use within the United States. Offerors shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the Buy American Act Certificate. (See Section 0300, paragraph 56 for additional guidelines).
- B. Offerors shall sign and return with their Offer, the **Buy American Act Certificate** included in the Solicitation.

13. **CONTRACT MANAGER**

The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Nadia Barrera

Nadia.Barrera@austintexas.gov

512-974-7142

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

SCOPE OF WORK

Development and Management of Bike Share Program

RFP EAG0109

1.0 PURPOSE AND INTENT

The City of Austin Public Works Department seeks a single entity to provide management and operation of a membership-based bicycle-sharing service ("Service") as part of a larger effort by the City to create a more sustainable transportation network by providing travel options, reducing vehicle miles traveled, improving air quality, mitigating congestion, and addressing the "first/last mile" with regard to public transit. The Service is expected to support the City's growing density and the region's growing transit network. By providing a variety of mobility options and alternatives to travel by, the City intends to become more sustainable, livable, and affordable. The focus of this shared transportation Service will be primarily the Downtown area its immediate environs.

The City's intent is to establish the Service as a viable, financially self-sustaining program. After the initial use of federal grant funds, the Service will be expected to generate sufficient income from advertising, membership, and other sources to provide for its annual operating services and the cost of capital repair and replacement of the service assets.

2.0 BACKGROUND

Austin lies at the heart of the rapidly growing Central Texas Region. The City and State of Texas demographers' project the region's population will grow by more than 1 million people in the next 25 years, while Austin's population will swell by 750,000. This growth presents both challenges and opportunities that can affect the livability, sustainability, and mobility of Austin and the region. Central Austin's existing transportation network is at capacity during peak hours and there are few opportunities to expand roadways, yet Austin's continued vitality – social, environmental, and economic – depend on mobility. Central Austin needs improved mobility – person-moving capacity – in the form of new and expanded modal options to meet the demands of continued economic and population growth. Bike-Share can become a critical part of the mobility solution.

3.0 BICYCLE-SHARING SERVICE PROGRAM ("SERVICE") DEFINITION

The City defines bicycle-sharing as a membership-based program with a fleet of on-demand self-service bicycles located throughout the service area, which can be rented by the minute/hour, by membership card or credit card, and returned to any bicycle-sharing station. The bicycles are distinctive and easy to ride with location and identification technologies (e.g., GPS or RFID) that provide usage data and tracking.

4.0 BICYCLE-SHARING DESIRED OUTCOME

The City desires a vendor-supplied bicycle-sharing system with qualities and attributes that will ensure the service is valued and used by the people of Austin. These attributes include:

- Increase the awareness and use of Austin's expanding bicycle infrastructure and bicycle commuting in general.
- Sufficient number of stations to create a viable system; we estimate that to be 30-40 stations, with 5-10 bikes located at each station.

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- Provide effective transportation for the “first/last mile” from other forms of transit to people’s destination.
- Provide efficient and easy circulation within the service area.
- Integration with rail, bus, and other transit modes and facilities.
- Increase and promote healthy active transportation initiatives
- Increase the visibility of bicycling and perception of bicycling as a form of transportation.

5.0 ORGANIZATIONAL STRUCTURE

The City will enter into a public-private venture (PPV) with a properly credentialed non-profit organization to execute the Service. The PPV will include a governing board consisting of equal representation by the City and the private partner. The private partner will be the managing partner responsible for day-to-day operation of the service. The City will participate in Key Decisions, as defined below:

- Selection of vendors and suppliers
- Approval of key personnel for the PPV
- Approval of annual operating budgets
- Approval of bicycle kiosk locations and designs
- Approval of advertising locations, messages, logo and design
- Approval of release of funds from the Revenue, Capital Repair & Replacement, and Reinvestment Accounts

The initial term of the agreement is five years, with one five year extension option. Not less than 180 days prior to the end of the initial contract period and each subsequent contract renewal, both parties will indicate their intentions to extend the agreement for an additional five year term. If either party decides not to continue the operation, then all assets will become City property and the City will have the right to enter into a new partnership at its sole discretion.

Prior to the execution of the PPV agreement, the Managing Partner will prepare and submit an organizational plan for the PPV to the City for approval. The plan will identify the key personnel, their roles and responsibilities, and the proposed compensation structure for full and part time personnel.

6.0 FINANCIAL REQUIREMENTS, MANAGEMENT AND RECORDS

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As the Managing Partner, the private partner will provide \$500,000 of the initial project cost to meet the federal grant requirements, and will be responsible for maintaining all business records for the PPV entity and filing all required tax and legal documents. The City requires that the funds be provided to the City of Austin in one lump sum within 15 working days of Council approval of the contract between the Managing Partner and City. The City retains the right to inspect and audit the business records of the Managing Partner at its sole discretion.

6.1 The Managing Partner will establish the following “waterfall of accounts” to handle the financial assets of the PPV:

- The **Revenue Account** will receive all proceeds from the initial federal grant and local cost share, operating revenues from memberships and advertising, and all other sources of income. Funds will be released to the operating account each month in accordance with the approved budget. Revenues in excess the minimum amount required to keep the account active will be released to flow through the waterfall.
- The **Operating Account** will receive funds from the Revenue Account and will be dispersed by the Managing Partner in accordance with the approved budget. At the end of each month, all funds in excess of one month’s operating reserve will be released to the Capital Repair & Replacement Account.
- Excess funds from the Operating Account will flow into the **Capital Repair & Replacement (CR&R) Account**. This account will build the balance required to perform scheduled capital repair and replacement of the program’s assets. With the approval of the Governing Board, funds in excess of the CR&R requirements will be released the Reinvestment Account. Funds in the CR&R Account will be held in an appropriate and approved account (as determined by the Governing Board).
- The **Reinvestment Account** will receive all excess revenues and funds will be held in an appropriate and approved account (as determined by the Governing Board) for future uses, including but not limited to expansion of the system.

The Managing Partner will be responsible for preparing the business plan and financial reports for the PPV. Prior to the execution of the PPV agreement, the Managing Partner will submit an initial business plan, start-up and operating budget, and financial pro forma to the City for approval. Thereafter, the Managing Partner will update the pro forma and prepare an annual budget for submittal to the Governing Board not less than 60 days prior to the end of the fiscal year (the fiscal year will coincide with the City’s fiscal year). The annual budget will consist of an operating budget, a capital repair and replacement budget, and a reinvestment budget. Within 90 days of the end of the fiscal year, the Managing Partner will submit an annual report and financial statement to the Governing Board.

7.0 SCOPE OF WORK

7.1 Install System

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The successful Managing Partner will manage a minimum of bicycles and stations that are functional and appropriate for deployment in Austin as determined by the City. The full system will be operable no later than May 2013 for a period of at least five years. The bicycles and all components of the system including all system hardware and software shall be warranted for a period of five years. Please describe the following in detail:

- The non-profit model and provide rationale for proposed model. The City will own the bicycles and stations purchased with federal funds. Proposers who wish to own the system will need to be able to demonstrate the City that the system will not be subject to repossession.

Please note, the City has a separate procurement out for the bicycles, kiosks, and software, and the Managing Partner will need to work closely with the selected vendor regarding all aspects of the bicycles, kiosks, and software including delivery, locations, PCI (Payment Card Industry) compliance, and any other aspects tied to the purchase. Please reference Attachment A for City of Austin Payment Card Industry (PCI) Data Security Standards.

7.2 Operations

Within 2 months of execution of the PPV agreement, the Managing Partner will submit an Operations Plan to the City for approval. The Operations Plan will address the following minimum requirements:

- **Service Area Plan:** The Managing Partner will work with the City to provide a station plan analysis and service area plan with a list of ready-to-permit station locations. The station plan will include the methodology for determining the station locations and service area. Station locations should emphasize maximizing ridership while minimizing the loss of on-street parking revenue. The station area plan and methodology must incorporate a plan to provide access for underserved populations. The Managing Partner will provide maps and descriptions of the initial bicycle-share service area and potential kiosk locations to the non-profit Governing Board for approval.

Any future plans to serve areas outside the Central City, especially satellite stations serving a last mile connection from a high capacity transit stop or a neighborhood business district with sufficient trip demand to support a bike share station will be submitted to the city for review and approval.

- **Final station locations** are subject to the approval of the City Traffic Engineer and must meet Americans with Disabilities Act (ADA) requirements as well as City of Austin requirements (which can be found on the City's website). Station locations within City right-of-way will require a permit. The successful Managing Partner will be responsible for complying with application requirements and payment of permit fees. The Managing Partner should also be aware that, in general, there is limited space in the Right-of-Way for placement of stations.
- **System Development & Deployment Plan:** The Managing Partner will provide a detailed description of the approach to procuring and deploying the bicycle-sharing system within the defined and approved service area, including but not limited to the following:

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- a. Functional and aesthetic design and manufacture of bicycle-sharing equipment.
 - b. Plans for installation of the equipment including but not limited to detailed specification of equipment, site plan, electrical plan and construction plan.
 - c. Plans for outreach and coordination with private land owners for kiosk placement if not on public right-of-way.
 - d. Plans for input, outreach, and coordination with area stakeholders and public prior to deployment.
 - e. Proposed security measures to prevent, deter, and minimize damage to or theft of bicycles, kiosks, and other related equipment.
 - f. Plans for obtaining license agreements and other real estate access agreements for kiosk locations.
 - g. Review and analysis of service area and recommendation on number of kiosks and bicycles required for a viable system, based on Bike Share "best practice" and public input.
 - h. Create a Bike Share Employee Matrix and hire an Executive Director and employees for the bike-share Hub all to be approved by Governing Board.
 - i. Analysis of affect on the existing Austin Bicycle Rental industry and a clear plan to address any negative affects.
 - j. Pricing Plan of cost for bike share membership
 - k. Ordering and securing bike-share equipment from vendors, including the storage and assembling of the bicycles.
 - l. Coordinating with stakeholders to establish bike-share installment timeline
 - m. Collaborate with contractor to establish schedule and construction of site location
 - n. Collaborate with vendor and contractor to deliver and install of bike-share equipment
 - o. Weekly update meeting with City on the progress of bike-share construction and management
- **Marketing and Revenue Plan:** The Managing Partner will submit a detailed plan to support the revenue projections contained in the pro forma and budget. The plan will address the approach to market individual and corporate memberships provide pricing for membership options and rental rates, collect revenues via credit/debit cards, forming partnerships with but not limited to local transit and hospitality entities, selling advertising opportunities, and securing other revenue opportunities. The Managing Partner will propose appropriate branding and identity decisions to the City, and market bike sharing in Austin. This requirement includes:
 - a. Development of brand, image, logo, and marketing plan for the bike sharing system. The City of Austin will have final say on system branding, logos and images.
 - b. Development of website, web-based applications, and smart-phone applications appropriate for system
 - c. Identify target markets with estimated percentage of user demographic
 - d. Identify key messages for different target markets (including bilingual advertisement)
 - e. Identify social media strategies.
 - f. Identify strategies and develop outreach plan to engage low-income users and traditionally under-represented groups including communities of color, immigrants, refugees and individuals that do not use traditional banking services

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- **System Operations & Maintenance Plan:** The Managing Partner will submit a detailed plan to keep equipment, including bicycles and kiosks, well-maintained and clean, addressing the following minimum requirements:
 - a. Daily redistribution of bicycles.
 - b. Bicycle maintenance and cleaning.
 - c. Once every other month the each bicycle is pulled into bike-share hub for inspection and maintenance
 - d. Maintain maintenance records for each bicycle.
 - e. Implementation of technology, including mobile applications, web applications, kiosk connectivity.
 - f. Integration of the bicycle sharing program with transit systems.
 - g. Maintain a minimum fleet at the bike-share hub
- **Reporting Plan:** The Managing Partner shall provide a monthly reporting on the key performance indicators of the Service and provide overall milestone reporting every 6 months, including but not limited to the following:
 - a. Total number of trips and when they occurred
 - The most popular time when the bicycles are in use
 - b. Total number of trips per station
 - Daily
 - Weekly
 - Noting the most and least popular station
 - c. Duration of trips and miles traveled (either from point to point or with bicycle mounted measuring equipment)
 - Average duration per trip
 - Average number of miles per trip
 - d. Number of customers and their membership types
 - 24 hour memberships
 - Weekly Memberships
 - Year long Membership
 - Student / senior citizen/ early registration
 - e. Service membership numbers and rate of growth from launch date
 - f. Spatial distribution of membership (with credit card information their location by zip code can be determined to know where most of the members live)
 - g. The carbon offset
 - h. Gallons of gas saved
 - i. Total number of calories burned
 - j. Log of customer complaints or maintenance issues with the bike-share system
 - k. **Remote Kiosk Coordination Plan:** The Managing Partner shall provide a logistic plan for remote off site bike-sharing kiosk during events.
 - Separate report of trips, check-in and check-out to remote station
 - Plan on how bikes will be rotated back to stations periodically during the day

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7.3 Managing Partners Capabilities and Project team

Managing Partners must include a detailed description of their capacity and expertise to conduct these tasks, including but not limited to:

- a. Description of similar projects performed within the last five (5) years which best characterizes the Managing Partner capabilities, work quality, cost control, and experience in the bicycle industry or related industry.
 - b. Must maintain a non-profit (501-C3) status
 - c. Description of resources available to perform the work for the duration of the contract and other on-going projects
 - d. Description of internal procedures and/or policies associated or related to work quality and cost control
 - e. Describe firm's management and organizational capabilities;
 - f. Describe all relevant prior experience in creating and implementing effective operation, maintenance and repair plans; describe the economic impact of such plans with respect to job creation.
 - g. Letter of intent from the Executive Director or Chairman of the Board for the initial project cost \$500,000 to meet the federal grant requirements
 - h. Maintain proof of commercial insurance
- Identify the approximate number of people to be assigned to the project including names of key team members, who will perform the work on this project, if known, and:
 - a. Their responsibilities on this project
 - b. Current assignments and location
 - c. Experience on similar or related projects
 - d. Unique qualifications
 - e. Percentage of their time that will be devoted to the project
- Extent of company's principal member's and team's involvement. Team qualifications and experience on similar or related projects including, but not limited to:
 - a. Qualifications and relevant experience of the prime contractor
 - b. Qualifications and relevant experience of sub-contractors, if any
 - c. Project manager's experience with similar projects
 - d. City's compliance with M/WBE Program
- Please describe the number and types of jobs this project will create in City of Austin. Describe any partnerships with local workforce training, job placement, and/or community organizations that will help ensure job opportunities for people from traditionally under-represented communities. Describe whether these partnerships are new or existing.
- Describe or provide a detailed description of approach to overall management and integration of all activities required by the scope of work, including the management objectives and techniques that demonstrate how the work requirements and goals will be met.

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- Include an organizational chart and relevant information about lines of authority and responsibility, a statement regarding how the firm is prepared to respond promptly to problems, program or personnel changes over the life of the bike share system.

8.0 WORK PERFORMED BY THE CITY

Public Works has assigned a Project Manager to oversee the successful Managing Partner's work and provide support as needed. Specific duties the City will perform include:

- Overall management of the project process, scope, schedule, deliverables, and budget.
- Maintain ongoing communication with successful Managing Partner team, project stakeholders and agency partners.
- Provide outreach to media, as needed
- Provide technical support to the contractor team where appropriate.

In addition, Public Works will make the following technical resources available for the successful Managing Partner's use:

- Traffic counts, when available
- Geographic information systems (GIS) data
- Preliminary station planning area analysis

Deliverables

The Managing Partner will provide to the City a written report containing methodology for and findings from user groups. The report will contain a discussion of the findings, including any relevant peer-reviewed literature citations, and a set of recommendations for messaging. Messaging recommendations should be clearly stated.

The written report will be produced from a series of scheduled deliverables:
Proposed Schedule

RFP Release	October 22, 2012
Proposals due	November 15, 2012
Evaluations	November 27-30, 2012
Council Approval	January 2013
Estimated launch of web-based subscription system	March 1, 2013
Delivery and placement of kiosks	April 1 - May 1
Beginning of Service	May 2013

9.0 FEDERAL REQUIREMENTS

The entity agrees to comply with all applicable federal guidelines as set forth by the federal funding agency, and all grant award requirements.

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PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
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1. PROPOSAL FORMAT

Prefacing the proposal, the Proposer shall provide an Executive Summary of three (3) pages or less, which gives in brief, concise terms, a summation of the proposal. **The original proposal shall be single sided, unbound, with no staples or paperclips. Copies of the proposal do not need to follow this format. One electronic copy of the proposal on a CD or flash drive in Word or PDF must also be submitted with the original bid. The CD or flash drive will not be returned.** The proposal itself shall be organized in the following format and informational sequence:

- A. **Part I - Business Organization**: State full name and address of your organization and identify parent company if you are a subsidiary. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Indicate whether you operate as a partnership, corporation, or individual. Include the State in which incorporated or licensed to operate.
- B. **Part II - System Concept and Solution**: Define in detail your understanding of the requirement presented in the Scope of Work of this request for proposal and your system solution. Provide all details as required in the Scope of Work and any additional information you deem necessary to evaluate your proposal.
- C. **Part III - Program**: Describe your technical plan for accomplishing required work. Include such time-related displays, graphs, and charts as necessary to show tasks, sub-tasks, milestones, and decision points related to the Scope of Work and your plan for accomplishment. Specifically indicate:
 - i. A description of your work program by tasks. Detail the steps you will take in proceeding from Task 1 to the final tasks.
 - ii. The technical factors that will be considered in section above, and the depth to which each will be treated.
 - iii. The degree of definition provided in each technical element of your plan.
 - iv. The points at which written, deliverable reports will be provided.
 - v. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Request for Proposal (RFP).

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- D. **Part IV - Project Management Structure:** Provide a general explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.
- E. **Part V - Prior Experience:** Describe only relevant corporate experience and individual experience for personnel who will be actively engaged in the project. Do not include corporate experience unless personnel assigned to this project actively participated. Do not include experience prior to 1998. Supply the project title, year, and reference name, title, present address, and phone number of principal person for whom prior projects were accomplished.
- F. **Part VI - Personnel:** Include names and qualifications of all professional personnel who will be assigned to this project. State the primary work assigned to each person and the percentage of time each person will devote to this work. Identify key persons by name and title. Provide all resumes.
- G. **Part VII - Local Business Presence:** The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation. Points will be awarded through a combination of the Offeror's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Offeror's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Specify if and by which definition the Offeror or Subcontractor(s) have a local business presence.
- H. **Part VIII - Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying:**
- i. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2-7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
 - ii. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
 - iii. If a Respondent has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Respondent is given written notice and a hearing in advance of the debarment.
 - iv. The City requires Offerors submitting Offers on this Solicitation to provide a signed Section 0810, Non-Collusion, Non-Conflict of Interest, and Anti-Lobbying Affidavit certifying that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance The text

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of the City Ordinance is posted on the Internet at:
<http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

- I. **Part IX - Proposal Acceptance Period:** All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal
- J. **Part X - Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.
- K. **Part XI - Authorized Negotiator:** Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.
- L. **Part XII - Rates/Fees:** Provide the rates/fees for all bicycle rental associated costs to be charged to the customers under this contract. This is to be an all-inclusive list of any costs a customer could potentially end up being charged.

- i. Total cost schedule.

2. **EXCEPTIONS:**

Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

3. **PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

4. **EVALUATION FACTORS AND AWARD**

- A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

- i. 100 points.

- (1) System Concept and Solutions Proposed (Grasp of the requirement and its solution(s), responsiveness to terms and conditions, completeness and thoroughness of the technical data and documentation.) **25 points**



**CITY OF AUSTIN
PURCHASING OFFICE
PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
SOLICITATION NUMBER: EAG0109**

- (2) Total Evaluated Cost (Rates/Fees) **25 points**
- (3) Schedule **20 points**
- (4) Demonstrated Applicable Experience/Personnel Qualifications **10 points**
- (5) Equipment Knowledge including understanding of Bike Share equipment **10 points**
- (6) **LOCAL BUSINESS PRESENCE (Maximum 10 points)**

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8
Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

- ii. Interviews, Optional. Interviews may be conducted at the discretion of the City. **Maximum 25 points**

City of Austin
Purchasing Office
Local Business Presence Identification Form

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE).

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN, SECTION 0900 OF THE SOLICITATION.

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	Bike Share of Austin					
Physical Address	400 Nueces St. Austin TX 78701					
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm						
Physical Address						
Is Firm located in the Corporate City Limits? (circle one)	Yes			No		
In business at this location for past 5 yrs?	Yes			No		
Location Type:	Headquarters	Yes	No	Branch	Yes	No

City of Austin
Purchasing Office
Local Business Presence Identification Form

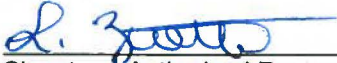
ACKNOWLEDGEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

I certify that my responses and the information provided on **Form 0605** are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in this Section, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this Section may be investigated and I hereby give my full permission for any such investigation and I fully acknowledge that any misrepresentations or omissions in my responses and information may cause my offer to be rejected.

OFFEROR'S FULL NAME AND ENTITY STATUS:

Lauren Ziedonis



Signature, Authorized Representative of Offeror

marketing manager

Title

11/15/12

Date

END

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**

Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button. =====>

Company's Name	<input type="text" value="Trek Bicycle"/>		
Name of Contact	<input type="text" value="John Hohmann"/>	Contact Title	<input type="text" value="Regional Manager"/>
Present Address	<input type="text" value="801 West Madison St."/>		
City	<input type="text" value="Waterloo"/>	State	<input type="text" value="WI"/> Zip Code <input type="text" value="53594"/>
Telephone Number	<input type="text" value="920-478-2191"/>	FAX Number	<input type="text"/>
Email Address	<input type="text" value="John-Hohmann@trekbikes.com"/>		

CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET

Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

Company's Name	<input type="text" value="Giant Bicycles"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text" value="3587 Old Conejo Rd"/>		
City	<input type="text" value="Newbury Park"/>	State	<input type="text" value="CA"/>
Telephone Number	<input type="text" value="800-874-4268"/>	Zip Code	<input type="text" value="91320"/>
	FAX Number	<input type="text"/>	
Email Address	<input type="text"/>		

**CITY OF AUSTIN
PURCHASING OFFICE
REFERENCE SHEET**
Please Complete and Return This Form with the Offer

Solicitation Number:

Offeror's Name

Date

The Offeror shall furnish, with the Offer, the following information, for at least recent customers to whom products and/or services have been provided that are similar to those required by this Solicitation.

To add additional references to this form, click the Add Reference Button.

=====>

Add Reference

Company's Name	<input type="text" value="Giro"/>		
Name of Contact	<input type="text"/>	Contact Title	<input type="text"/>
Present Address	<input type="text"/>		
City	<input type="text"/>	State	<input type="text"/>
Telephone Number	<input type="text" value="1-877-358-2239"/>	FAX Number	<input type="text"/>
Email Address	<input type="text"/>		

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION
SOLICITATION NO **EAG0109**

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 15 day of November, 20 12.

CONTRACTOR Bike Share of Austin

Authorized Signature  Lauren Friedman


Title Marketing Manager

City of Austin, Texas
NON-SUSPENSION OR DEBARMENT CERTIFICATION

SOLICITATION NO. EAG0109

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	<div style="border: 1px solid black; min-height: 20px;">Bike share of Austin</div>		
Signature of Officer or Authorized Representative:	<div style="border: 1px solid black; min-height: 20px;"></div>	Date:	<div style="border: 1px solid black; min-height: 20px;">11/15/12</div>
Printed Name:	<div style="border: 1px solid black; min-height: 20px;">Lauren Ziedonis</div>		
Title:	<div style="border: 1px solid black; min-height: 20px;">Marketing Manager</div>		

CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT
SOLICITATION NO. EAG0109
FOR

Development and Management of Bike Share Program

State of Texas

County of Travis

The undersigned "Affiant" is a duly authorized representative of the Offeror for the purpose of making this Affidavit, and, after being first duly sworn, has deposed and stated and hereby deposes and states, to the best of his or her personal knowledge and belief as follows:

The term "**Offeror**", as used herein, includes the individual or business entity submitting the Offer and for the purpose of this Affidavit includes the directors, officers, partners, managers, members, principals, owners, agents, representatives, employees, other parties in interest of the Offeror, and anyone or any entity acting for or on behalf of the Offeror, including a subcontractor in connection with this Offer.

- 1. Anti-Collusion Statement.** The Offeror has not in any way directly or indirectly:
 - a. colluded, conspired, or agreed with any other person, firm, corporation, Offeror or potential Offeror to the amount of this Offer or the terms or conditions of this Offer.
 - b. paid or agreed to pay any other person, firm, corporation Offeror or potential Offeror any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Offer or the Offer of any other Offeror.
- 2. Preparation of Solicitation and Contract Documents.** The Offeror has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Offeror has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Offerors, so as to have an unfair advantage over other Offerors, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
- 3. Participation in Decision Making Process.** The Offeror has not participated in the evaluation of Offers or other decision making process for this Solicitation, and, if Offeror is awarded a Contract hereunder, no individual, agent, representative, consultant, subcontractor, or subconsultant associated with Offeror, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Offeror may have provided relevant product or process information to a consultant in the normal course of its business.
- 4. Present Knowledge.** Offeror is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Offeror to obtain an advantage over other Offerors or would prevent Offeror from advancing the best interests of the City in the course of the performance of the Contract.
- 5. City Code.** As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Offeror is a City official or employee or is related to any City official or employee within the first or second degree of consanguinity or affinity.
- 6. Chapter 176 Conflict of Interest Disclosure.** In accordance with Chapter 176 of the Texas Local Government Code, the Offeror:
 - a. does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;

**CITY OF AUSTIN
NON-COLLUSION,
NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING AFFIDAVIT**

- b. has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$250 in the twelve month period preceding the date the officer becomes aware of the execution of the Contract or that OWNER is considering doing business with the Offeror.
- c. as required by Chapter 176 of the Texas Local Government Code, Offeror must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City. The questionnaire is available on line at the following website for the City Clerk:

<http://www.austintexas.gov/department/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

If the Offeror cannot affirmatively swear and subscribe to the forgoing statements, the Offeror shall provide a detailed written explanation in the space provided below or, as necessary, on separate pages to be annexed hereto.

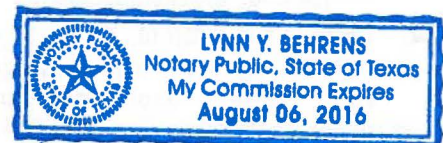
Offeror's
Explanation:

7. **Anti-Lobbying Ordinance.** As set forth in the Solicitation Instructions, Section 0200, paragraph 7N, between the date that the Solicitation was issued and the date of full execution of the Contract, Offeror has not made and will not make a representation to a City official or to a City employee, other than the Authorized Contact Person for the Solicitation, except as permitted by the Ordinance.

Contractor's Name:	<div style="border: 1px solid black; padding: 2px;">Bike Share of Austin</div>
Printed Name:	<div style="border: 1px solid black; padding: 2px;">Lauren Ziedonis</div>
Title:	<div style="border: 1px solid black; padding: 2px;">Marketing Manager</div>



Signature of Officer or Authorized Representative:



Subscribed and sworn to before me this 15 day of November, 2012.


Notary Public

My Commission Expires 8/6/2016

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO. EAG0109

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:


- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

(To add additional employees to this page, click the Add Button.)

	Employee Name	Employee Job Title
Add		
Delete		

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name:	Bike Share of Austin		
Signature of Officer or Authorized Representative:		Date:	11/15/12
Printed Name:	Lauren Ziedonis		
Title:	Marketing Manager		

**CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number:	<input type="text" value="512-473-0222"/>
Description of Services:	<input type="text" value="Development and Management of Bike Share Program"/>
Contractor Name:	<input type="text" value="Bike Share of Austin"/>

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title:	<input type="text"/>		
Signature of Employee:	<input type="text"/>	Date:	<input type="text"/>
Employee's Printed Name:	<input type="text"/>		

(Witness Signature)

(Printed Name)

CITY OF AUSTIN, TEXAS
BUY AMERICAN ACT CERTIFICATE
(Please duplicate as needed)

SOLICITATION NO. EAG0109

1. The Offeror certifies that each end product, except those listed in paragraph below, is a domestic end product and that the Offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in Section 0300, paragraph 55, entitled "Buy American Act-Supplies."
2. Foreign End Products:

<div style="border: 1px solid black; padding: 2px; background-color: #f0f0f0;">Add Item</div>	Line Item No. 	Country of Origin
<input type="checkbox"/> Check if Foreign End Product is treated as domestic on an approved Government List (Attach Documentation)		

Contractor's Name:	<div style="border: 1px solid black; min-height: 20px;">Bike Share of Austin</div>		
Signature of Officer or Authorized Representative:	<div style="border: 1px solid black; min-height: 20px;">L. Ziedonis</div>	Date:	<div style="border: 1px solid black; min-height: 20px;">11/15/12</div>
Printed Name:	<div style="border: 1px solid black; min-height: 20px;">Lauren Ziedonis</div>		
Title:	<div style="border: 1px solid black; min-height: 20px;">Marketing Manager</div>		

City of Austin, Texas
NONRESIDENT BIDDER PROVISIONS
SOLICITATION NO. EAG0109

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "Non-resident Bidder"?

☒ Texas Resident Bidder - A Bidder whose principal place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.

☐ Non-resident Bidder

Bidder's Name:	<div style="border: 1px solid black; min-height: 20px;">Bike Share of Austin</div>		
Signature of Officer or Authorized Representative:	<div style="border: 1px solid black; min-height: 20px;">L. Zett</div>	Date:	<div style="border: 1px solid black; min-height: 20px;">11/15/12</div>
Printed Name:	<div style="border: 1px solid black; min-height: 20px;">Lauren Ziedonis</div>		
Title:	<div style="border: 1px solid black; min-height: 20px;">Marketing Manager</div>		

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: EAG0109

PROJECT NAME: Development and Management of Bike Share Program

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No ☒ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes ☐ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Bike Share of Austin
Company Name

Lauren Ziedonis Marketing Manager
Name and Title of Authorized Representative (Print or Type)

L. Ziedonis
Signature

11/15/12
Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**
(Please duplicate as needed)

SOLICITATION NUMBER:	EAG0109
PROJECT NAME:	Development and Management of Bike Share Program

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Bike Share of Austin		
Address	400 Nueces St.		
City, State Zip	Austin TX 78701		
Phone	512-473-0222	Fax Number	
Name of Contact Person			
Is company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	MBE/WBE Joint Venture <input type="checkbox"/>

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Lauren Ziedonis marketing manager
Name and Title of Authorized Representative (Print or Type)

L. Ziedonis
Signature

11/15/12
Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person	Phone Number:		
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____

Exhibit A
SCOPE OF WORK
DEVELOPING AND MANAGING BIKE SHARE SYSTEM FOR CITY OF AUSTIN
RFP EAG0109

1.0 PURPOSE AND INTENT

The City seeks a single entity to provide a membership-based bicycle-sharing service as part of a larger effort by the City to create a more sustainable transportation network by providing travel options, reducing vehicle miles traveled, improving air quality, mitigating congestion, and addressing the “first/last mile” with regard to public transit. The bicycle-sharing service is expected to support the City's growing density and the region's growing transit network. By providing a variety of mobility options and alternatives to travel by, and even ownership of, single-occupancy vehicles, the City intends to become more sustainable, livable, and affordable. The focus of this shared transportation service will be primarily the Downtown area its immediate environs.

The City's intent is to establish the bicycle-sharing services as a commercially viable, financially sustainable effort. After the initial use of federal grant funds, the bicycle-sharing service will be expected to generate sufficient income from advertising, membership, and other sources to provide for its annual operating services and the cost of capital repair and replacement of the program assets.

2.0 BACKGROUND

Austin lies at the heart of the rapidly growing Central Texas Region. The City and State of Texas Demographers project the region's population will grow by more than 1 million people in the next 25 years, while Austin's population will swell by 750,000. This growth presents both challenges and opportunities that can affect the livability, sustainability, and mobility of Austin and the region. Central Austin's existing transportation network is at capacity during peak hours and there are few opportunities to expand roadways, yet Austin's continued vitality – social, environmental, and economic – depend on mobility. Central Austin needs improved mobility – person-moving capacity – in the form of new and expanded modal options to meet the demands of continued economic and population growth. Bike-Share can become a critical part of the mobility solution.

3.0 BICYCLE-SHARING SERVICE PROGRAM DEFINITION

The City defines bicycle-sharing as a membership-based program with a fleet of on-demand self-service bicycles located throughout the service area, which can be rented by the minute/hour, by membership card or credit card, and returned to any bicycle-sharing station. The bicycles are distinctive and easy to ride with location and identification technologies (e.g., GPS or RFID) that provide usage data and tracking.

4.0 BICYCLE-SHARING DESIRED OUTCOME

The City desires a vendor-supplied bicycle-sharing system with qualities and attributes that will ensure the service is valued and used by the people of Austin. These attributes include:

4.1 Increase the awareness and use of Austin's expanding bicycle infrastructure and bicycle commuting in general.

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- 4.2 Enough stations to create a viable system; we estimate that to be 30-50 stations, with 2-10 bikes located at each station.
- 4.3 Provides effective transportation for the "first/last mile" from other forms of transit to people's destination.
- 4.4 Provides efficient and easy circulation within the service area.
- 4.5 Integration with rail, bus, and other transit modes and facilities.
- 4.6 Increase and promote healthy active transportation initiatives
- 4.7 Increase the visibility of bicycling and perception of bicycling as a form of transportation.

5.0 ORGANIZATIONAL STRUCTURE

5.1 Within 15 business days after contract execution, the Contractor shall prepare and submit an organizational plan for the PPV to the City for written approval. The plan shall include the following:

- 5.1.1 an organization chart with key personnel, their roles and responsibilities, and the proposed compensation structure for full and part time personnel,
- 5.1.2 relevant information about lines of authority and responsibility, and how the Contractor is prepared to respond promptly to problems, program or personnel changes over the life of the bike share system,
- 5.1.3 business model and revenue plan,
- 5.1.4 business plan with growth projections, membership projections, membership pricing structure and bike usage forecast, and
- 5.1.5 program rules.

5.2 Contractor shall describe the number and types of jobs this project will create in City of Austin. Describe any partnerships with local workforce training, job placement, and/or community organizations that will help ensure job opportunities for people from traditionally under-represented communities. Describe whether these partnerships are new or existing.

6.0 FINANCIAL REQUIREMENTS, MANAGEMENT AND RECORDS

The Contractor, as the managing partner, shall provide \$500,000 of the initial project cost to meet the federal grant requirements, and shall be responsible for maintaining all business records for the PPV entity and filing all required tax and legal documents. A lump sum check in the amount of \$150,000 made out to "The City of

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Austin" shall be hand delivered by the Contractor to the City's Contract Manager within two (2) business days from the execution of the Contract. A lump sum check made out to "The City of Austin" for the remaining \$350,000 shall be hand delivered by the Contractor to the City's Contract Manager by August 30, 2013. The City retains the right to inspect and audit the business records of the enterprise at its sole discretion.

The Contractor shall establish the following "waterfall of accounts" within 30 calendar days of Contract execution to handle the financial assets of the PPV and submit proof of such to the City's Contract Manager. All funds from these accounts must only be used for the intended purpose of this program:

6.1 The **Revenue Account** will receive all proceeds from, operating revenues from memberships and advertising, and all other sources of income. Funds will be released to the operating account each month in accordance with the approved budget. Revenues in excess of the minimum amount required by the bank to keep the account active will be released to flow through the waterfall.

6.2 The **Operating Account** will receive funds from the Revenue Account and will be dispersed by the Contractor in accordance with the approved budget. At the end of each month, all funds in excess of one month's operating reserve will be released to the Capital Repair & Replacement Account.

6.3 Excess funds from the Operating Account will flow into the **Capital Repair & Replacement (CR&R) Account**. This account will build the balance required to perform scheduled capital repair and replacement of the program's assets. With the written approval of the City, funds in excess of the CR&R requirements, as proposed by the Contractor, will be released to the Reinvestment Account. Funds in the CR&R Account will be held in an appropriate and approved interest bearing account (as determined by the City).

6.4 The **Reinvestment Account** will receive all excess revenues and funds will be held in an appropriate and approved account (as determined by the City) for future uses, including but not limited to expansion of the system.

6.5 The Contractor shall be responsible for preparing the business plan and financial reports for the PPV. Within 15 business days after the execution of the Contract, the Contractor shall submit an initial business plan, start-up and operating budget, and financial pro forma to the City for written approval. Thereafter, the Contractor will update the pro forma and prepare an annual budget for submittal to the Board and the City not less than 60 days prior to the end of the fiscal year (the fiscal year will coincide with the City's fiscal year). The annual budget will consist of an operating budget, a capital repair and replacement budget, and a reinvestment budget. Within 90 days of the end of the fiscal year, the Contractor will submit an annual report and financial statement to the Board and the City.

6.6 Contractor shall submit the following documents to the Contract Manager for review and written approval within 15 business days of contract execution:

6.6.1 Five-year budget projection

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6.6.2 Budget with line item detail

7.0 SCOPE OF WORK

7.1 The Contractor shall manage a minimum of bicycles and stations that are functional and appropriate for deployment in Austin. The full system shall be operable no later than December 2013 for a period of at least five years.

7.2 Within 15 business days of contract execution the Contractor shall submit a non-profit model and provide rationale for the proposed model to the City for written approval. The City will own the bicycles and stations purchased with federal funds.

7.3 The bicycles, kiosks, and software, are being purchased by the City through a competitive procurement. The Contractor shall work closely with the selected vendor regarding all aspects of the bicycles, kiosks, and software including delivery, locations, Payment Card Industry (PCI) Data Security Standards (Attachment A) compliance, and any other aspects tied to the purchase.

7.4 Operations: Within 30 calendar days of execution of the Contract, the Contractor shall submit an Operations Plan to the City for written approval. The Operations Plan will address the following minimum requirements:

7.4.1 Service Area Plan: The Contractor will work with the City to provide a station plan analysis and service area plan with a list of ready-to-permit station locations. The station plan will include the methodology for determining the station locations and service area. Station locations should emphasize maximizing ridership while minimizing the loss of on-street parking revenue. The station area plan and methodology must incorporate a plan to provide access for underserved populations. The Contractor will provide maps and descriptions of the initial bicycle-share service area and potential kiosk locations to the City for written approval.

Any future plans to serve areas outside the Central City, especially satellite stations serving a last mile connection from a high capacity transit stop or a neighborhood business district with sufficient trip demand to support a bike share station, will be submitted to the Board for review and recommendation to the City for written approval.

7.4.2 Final station locations, and subsequent additions of station locations, are subject to the approval of the City Traffic Engineer and must meet Americans with Disabilities Act (ADA) requirements as well as City of Austin requirements (which can be found on the City's website). Station locations within city right-of-way will require a permit. The Contractor will be responsible for complying with application requirements and payment of permit fees. The Contractor should also be aware that, in general, there is limited space in the Right-of-Way for placement of stations.

7.4.3 System Development & Deployment Plan: Detailed description of the approach to procuring for future phases and deploying the bicycle-sharing system within the defined service area, including but not limited to the following:

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- 7.4.3.1 Plans for installation of the equipment including but not limited to detailed specs of equipment, site plan, electrical plan and construction plan.
- 7.4.3.2 Plans for outreach and coordination with private land owners for kiosk placement if not on public right of way.
- 7.4.3.3 Plans for input, outreach, and coordination with area stakeholders and public prior to deployment.
- 7.4.3.4 Proposed security measures to prevent, deter, and minimize damage to or theft of bicycles, kiosks, and other related equipment.
- 7.4.3.5 Plans for obtaining license agreements and other real estate access agreements for kiosk locations.
- 7.4.3.6 Review and Analysis of service area and recommendation on number of kiosks and bicycles required for a viable system; based on Bike Share "best practice" and public input.
- 7.4.3.7 Create a Bike Share Employee Matrix and hire an Executive Director and employees for the bike-share Hub all to be approved by City.
- 7.4.3.8 Analysis of effect on the existing Austin Bicycle Rental industry and a clear plan to address any negative effects.
- 7.4.3.9 Pricing Plan of cost for bike share membership
- 7.4.3.10 Ordering and securing bike-share equipment from vendors, including the storage and assembling of the bicycles.
- 7.4.3.11 Coordinating with stakeholders to establish bike-share installment timeline
- 7.4.3.11 Collaborate with contractor to establish schedule and construction of site location
- 7.4.3.12 Collaborate with bike, kiosk, and software vendor to deliver and install of bike-share equipment
- 7.4.3.13 Weekly update meeting with City on the process of bike-share construction and management
- 7.4.3.14 Membership rules and waivers of liability
- 7.4.3.15 Customer Service Protocol
- 7.4.3.16 Event Coordination Plan
- 7.4.3.17 System size and concentration growth projections
- 7.4.3.18 Transportation impact
- 7.4.3.19 Capital Metro overlay
- 7.4.3.20 Last mile connectivity

7.5 **Marketing and Revenue Plan:** Within 15 business days of contract execution the Contractor will submit to the City for written approval a detailed plan to support the revenue projections contained in the pro forma and budget. The plan will address the approach to market individual and corporate memberships, provide pricing for membership options and rental rates, collect revenues via cash, credit/debit cards, forming partnerships with but not limited to local transit and hospitality entities, selling advertising opportunities, and securing other revenue opportunities. The Contractor will propose appropriate branding and identity decisions to the City for written approval, and market bike sharing in Austin.

- 7.5.1 This requirement includes:

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- 7.5.1.1 Development of brand, image, logo, and marketing plan for the bike sharing system. The City of Austin will have final say on system branding, logos, images, and locations.
 - 7.5.1.2 Development of website, web-based applications, and smart-phone applications appropriate for system
 - 7.5.1.3 Identify target markets with estimated percentage of user demographic
 - 7.5.1.4 Identify key messages for different target markets (including bilingual advertisement)
 - 7.5.1.5 Identify social media strategies
 - 7.5.1.6 Identify strategies and develop outreach plan to engage low-income users and traditionally under-represented groups including communities of color, immigrants, refugees and individuals that do not use traditional banking services
 - 7.5.1.7 Plan for subscription building
 - 7.5.1.8 Introduction to the public and education to include plan for public safety education/instruction and plan for helmet provisions, bike related accessories, and promotional items
- 7.5.2 Within 30 business days after execution of the Contract the Contractor shall provide to the City a written report containing methodology for and findings from user groups. The report will contain a discussion of the findings, including any relevant peer-reviewed literature citations, and a set of recommendations for messaging. Messaging recommendations should be clearly stated.
- 7.6 **System Operations & Maintenance Plan:** Within 30 calendar days after execution of the Contract the Contractor will submit to the City for written approval a detailed plan to keep equipment, including bicycles and kiosks, well-maintained and clean, addressing the following minimum requirements:
 - 7.6.1 Daily redistribution of bicycles.
 - 7.6.2 Bicycle maintenance and cleaning.
 - 7.6.3 Once every other month the each bicycle is pulled into bike-share hub for inspection and maintenance
 - 7.6.4 Maintain maintenance records for each bicycle.
 - 7.6.5 Implementation of technology, including mobile applications, web applications, kiosk connectivity.
 - 7.6.6 Integration of the bicycle sharing program with transit systems.
 - 7.6.7 Maintain a minimum fleet at the bike-share hub
- 7.7 **Reporting Plan:** By the 10th day of each month, the Contractor shall provide to the Board and City a monthly report on the key performance indicators of the Service milestone reporting monthly. Ten calendar days after each 6 month period Contractor shall submit a consolidated report semi-annually, including but not limited to the following:
 - 7.7.1 Total number of trips and when they occurred

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- 7.7.1.1 The most popular time when the bicycles are in use
- 7.7.2 Total number of trips per station
 - 7.7.2.1 Daily
 - 7.7.2.2 Weekly
 - 7.7.2.3 Noting the most and least popular station
- 7.7.3 Duration of trips and miles traveled (either from point to point or with bicycle mounted measuring equipment)
 - 7.7.3.1 Average duration per trip
 - 7.7.3.2 Average number of miles per trip
- 7.7.4 Number of customers and their membership types
 - 7.7.4.1 24 hour memberships
 - 7.7.4.2 Weekly Memberships
 - 7.7.4.3 Yearlong Membership
 - 7.7.4.4 Student / senior citizen/ early registration
- 7.7.5 Service membership numbers and rate of growth from launch date
- 7.7.6 Spatial distribution of membership(with credit card information their location by zip code can be determined to know where most of the members live)
- 7.7.7 The carbon offset
- 7.7.8 Gallons of gas saved
- 7.7.9 Total number of calories burned
- 7.7.10 Log of customer complaints or maintenance issues with the bike-share system
- 7.7.11 Remote Kiosk Coordination Plan: The Contractor shall provide a logistic plan for remote off site bike-sharing kiosk during events.
 - 7.7.11.1 Separate report of trips, check-in and check-out to remote station
 - 7.7.11.2 Plan on how bikes will be rotated back to stations periodically during the day

8.0 Contractor's Responsibilities

Contractor shall:

- 8.1 Maintain a non- profit (501c3) status
- 8.2 Maintain proof of commercial insurance
- 8.4 Comply with the City's MBE/WBE Program. Contractor agrees and acknowledges purchases of goods and services shall comply with the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program as described in AUSTIN, TEX., CODE chapters 2-9a (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Construction), 2-9b (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Professional Services), 2-9c (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Nonprofessional Services) and 2-9d (Minority-Owned and Women-Owned Business Enterprise Procurement Program: Commodities) as amended, recodified or reenacted from time to time. The City will assist Contractor comply with this subsection by providing information and make staff available to consult with on the City's requirements and applicability to the proposed scope of work to be procured by Contractor.
- 8.5 **Permitted Use:** Contractor shall use and continuously occupy the Premises and bike share assets during the term of this Agreement for the purpose of operating and maintaining the bike share program for use by the public, and related and incidental purposes and

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programs. The premises and assets of the Bike Share Program shall only be used for the purpose and intent of the program as authorized by the City in accordance with the Contract.

8.6 Contractor, as manager of the Bike Share Program is entrusted by the City to provide access and equal opportunity to services and programs administered by Contractor that are comparable to other bike share programs, that meet the needs of the community, and for which the Contractor may charge fees that are reasonable, consistent with bike share programs in the region.

8.7 **Maximize Public Use:** Contractor shall exercise diligence in using, managing and operating the bike share program assets in a manner that maximizes public access, utilization of the Premises and assets and is responsive to community feedback. Contractor shall exercise due diligence and good faith efforts in managing and operating the bike share program so as to minimize operating expenses and maximize operating revenues consistent with the uses permitted on the Premises and for the bike share program assets. Contractor in establishing and implementing its operating policies, may schedule not only those events that generate substantial direct revenue to the bike share program but also those events that produce less direct revenue but in Contractor's good faith judgment, generate either a significant cultural, or other benefit public or otherwise serve the public interest; provided that Contractor shall ensure the Premises and bike share assets are used for a public purpose that furthers the bike share program's mission and is in compliance with the Contract.

8.8 **Illegal Use Not Permitted:** Contractor may not use or occupy any part of the Premises or bike share program assets for any use or purpose that violates any applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Travis, or the City of Austin, or other lawful authority with jurisdiction over the Premises, and shall not permit to be carried on any activity that would constitute an actionable nuisance under the laws of the State of Texas. Contractor shall take all reasonable precautions to eliminate nuisances or hazards relating to its activities on or about the Premises, except as to Preexisting Conditions.

8.9 **Fees:** A proposed schedule of fees for memberships, other authorized fees, shall be submitted to the Board and the City as part of the Annual Report. The fees will be reviewed by the Board and the Board may request that the Contractor modify such fees. Said fees and charges shall bear a reasonable relation to fees charged for other similar programs and similar services, and shall be neither excessive nor grossly deficient by comparison; except that special provisions to assure access to the community shall be submitted to the City for written approval. Fees shall be posted on the Premises so as to be visible to the public. Contractor agrees to offer a fifty percent discount off annual membership prices to City employees. With each annual report to the Board and the City, Contractor shall include the number of City employees with discounted memberships.

8.10 **Inspections:**

8.10.1 Contractor shall receive Bike Share Program bikes, kiosks, and software inventory in coordination with City Contract Manager, and attach City-provided asset tags to each asset.

8.10.2 Each party shall designate a staff member(s) to conduct and complete a walk-through inspection of the Premises and bike share program assets currently occupied or being used by Contractor within 30 calendar days of receipt and assembly of bikes and stations. The inspection shall document the current condition of the Premises and bike share program assets. Contractor shall not utilize the Premises and bike share program assets without first completing an inspection with City staff and obtaining the Director's written approval, which shall not be unreasonably withheld. Regardless of what the inspections reveal, the City shall not be responsible for the cost or duty to improve or make repairs to the Premises and bike share program assets. Any additional inspections by licensed or certified inspectors will be at

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Contractor's discretion and sole cost. Any third party inspection reports received by Contractor shall be provided to the City within ten days of receipt of such reports.

8.10.3 An inspection of the entire Premises and bike share program assets shall be conducted annually; provided, however, the City retains the right to access the Premises and bike share program assets for periodic and regular inspections during normal business hours, and after hours, with prior notice as may be necessary during the term of this Contract. The City may inspect to insure that fire, safety and sanitation regulations and other provisions contained in this Contract or in the City Code are being adhered to by the Contractor. Inspection by the City does not relieve Contractor under any of any of its obligations by Contractor to maintain the Premises. Failure to conduct any inspections as may be required shall not operate as a waiver of the City's right to conduct these inspections and shall not be considered a default of the terms of this Contract.

8.11 **Incident Reports:** Contractor shall notify the City in writing, by the next business day following the occurrence/notice, of any complaints or reports of violations of the law that have occurred at the Premises and that are significant in nature or that have a material effect on the operations of the Premises. Contractor shall maintain for review by the City upon reasonable notice, an incident log of all incidents or violations that occur on the Premise regardless of whether it is reported to the City.

8.12 **Public Relations:** Contractor shall summarize and notify the City of all media inquiries concerning the Premises or the bike share program or its operation within twenty-four (24) hours of the interview or other media inquiry in question. Contractor will provide the Contract Manager with draft copies of any public relations material or campaigns and obtain prior written approval before the release of any such material or campaign.

8.13 **Independent Audit:** Contractor shall arrange for an audit of its books and records by an independent, certified public accountant. This audit shall be conducted at Contractor's sole cost and expense and shall cover the previous five year period. Contractor shall deliver to the Board and the City an original, signed copy of each such audit within sixty (60) days prior to the fifth year anniversary of the Effective Date of this Agreement and each fifth year anniversary thereafter. Notwithstanding the foregoing the City may request an audit or review of Contractor's fiscal stability prior to the performance review if deemed necessary due to facts or information received by the City. If Contractor completes its own independent audit or review, other than in anticipation of the performance review, Contractor shall provide the City the audit within thirty (30) days of completion of the audit.

8.14 **Solicitation of Private and Public Funding:** Contractor shall (a) use its best efforts to (i) actively solicit private support for the Bike Share Program through membership fees and charitable contributions and (ii) actively solicit federal, state or local grants or other funds to support the operation and purposes of the Bike Share Program; and (b) apply all funds contributed to it as membership fees, charitable donations, public grants or loans, or any other sources, to the Revenue account in accordance with this Contract.

8.15 **Inventory Control and Asset Disposal:** Within 30 calendar days after execution of the Contract, Contractor shall submit an inventory control and asset disposal plan to the City for review and written approval.

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Deliverables Checklist

Schedule of deliverables (Requirements are in accordance with the Contract including Exhibits):

Timeline	Activity	Deliverable/Performance Measure	Reference
Within 15 business days of contract execution	Initial Advisory Board membership and Board Charter	City written approval	Section 1.5 of Contract
NLT 180 days prior to the end of the initial contract period and each subsequent contract renewal	both Parties indicate their intentions to extend the Contract	Parties reach agreement, execute amendment to exercise option	Section 4.1 of Contract
Within 15 business days of contract execution	Organization Plan	City written approval	Scope of Work (SOW) 5.1
Within 2 business days of contract execution	Lump Sum Check in amount of \$150,000	Made out to "The City of Austin" and delivered to City's Contract Manager	SOW, Section 6.0
By August 30, 2013	Lump Sum Check in amount of \$350,000	Made out to "The City of Austin" and delivered to City's Contract Manager	SOW, Section 6.0
Within 15 business days of contract execution	Initial business plan, start-up and operating budget and financial pro forma	City written approval	SOW, Section 6.5
NLT 90 days after the end of the fiscal year	submit an annual report and financial statement	To Board and City for review	SOW, Section 6.5
NLT 60 calendar days prior to end of fiscal year	Submit updated pro forma and annual budget	To Board and City for review	SOW, Section 6.5
Within 15 business days of contract execution	Five-year budget projection and budget with line item detail	City written approval	SOW, Section 6.6
December 2013	Bike Share System operable	City written approval	SOW, Section 7.1
Within 15 business days of contract execution	Non-profit model	City written approval	SOW, Section 7.2
Within 30 calendar days of contract execution	Operations Plan	City written approval	SOW, Section 7.4
Within 15 business days of contract execution	Marketing and Revenue Plan	City written approval	SOW, Section 7.5
Within 30 calendar days of contract execution	System Operations & Maintenance Plan	City written approval	SOW, Section 7.6
By 10 th day of each month, Monthly report to Board and City	Key performance indicators	To Board and City for review	SOW, Section 7.7

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Semiannually, within 10 calendar days after the end of the period	Submit consolidated reporting of previous six months key performance indicators	To Board and City for review	SOW, Section 7.7
Within 30 calendar days of receipt of bikes and stations	Walk –through inspection	Contractor and City to conduct	SOW, Section 8.10
Next business day of incident	Notice of complaints or reports of violations of law	Notice to City	SOW, Section 8.11
24 hours after interview or media inquiry	Notify City of media inquiries and submit to City draft copies of PR materials	Prior written approval by the City	SOW, Section 8.12
Within 60 days prior to the 5 th anniversary of Contract	Independent Audit	To Board and City for review	SOW, Section 8.13
Within 30 days of contract execution	Inventory control and asset disposal plan	City written approval	SOW, Section 8.15

9.0 FEDERAL REQUIREMENTS

The entity agrees to comply with all applicable federal guidelines as set forth by the federal funding agency and all grant award requirements.

EXHIBIT B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 15th day of MAY, 2013

CONTRACTOR

Authorized
Signature

Title

BIKE SHARE OF AUSTIN LLC

[Signature]

DIRECTOR

EXHIBIT C
CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

Employee Name	Employee Job Title
NOT AVAILABLE YET	

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name: _____

Signature of Officer
or Authorized
Representative: _____



Date: 5.15.13

Printed Name: _____

CRAIG STALEY

Title _____

DIRECTOR

**EXHIBIT D
CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION**

Contract Number: Insert Number	Description of Services: Insert Description
Contractor Name: Insert Contractor's Name	

Pursuant to the Living Wages and Benefits provision of the contract (reference Section 0400, Supplemental Purchase Provisions), the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour. In addition, employees are required to certify that they are compensated in accordance with the Living Wage provision. Contractors are prohibited from retaliating against any employee claiming non-compliance with the Living Wage provision.

I hereby certify under penalty of perjury that I am directly assigned to this contract and that I am:

- (1) compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) offered a health care plan with optional family coverage.

Employee's Title: Insert Employee's Title	
Signature of Employee	Date
Type or Print Name Insert Employee's Name	

(Witness Signature)

(Printed Name)



TO: Veronica Lara, Director
Department of Small and Minority Business Resources

FROM: Erin Grace, Buyer II
Purchasing Office

DATE: October 12, 2012

SUBJECT: Approval to use Zero Goals for Solicitation No. RFP EAG0109

Project Name: Bike Share Managing Program

Commodity Code(s): 9522220

Estimated Value: \$500,000

The Purchasing Office has determined that the following Goals are appropriate for this Commodity solicitation:

X No Goals (Goal of 0%)

This determination is based on the following reason:

This solicitation will be bid by and awarded to a prime contractor. No subcontracting opportunities have been identified.

Per paragraph 8.2.1 of the Rules Governing the Minority and Women Owned Business Enterprise Procurement Program, please approve the use of the above goals by completing and returning the below endorsement. If you have questions, please call me at 972-4017.

 Approval is hereby granted to use the above Goals.

 Approval is hereby denied. Recommend the use of the following goals based on the below reasons:

a. Goals: % MBE % WBE

b. Subgoals: % African American % Hispanic

 % Native/Asian American % WBE

This determination is based on the following reasons: My subcontracting opportunities were identified, however one firm is outside of SLBP MBE, certified WBE that can bid as prime.


Veronica Lara, Director

Date: 10/15/12